IDAHO COURT RULES

December 2012 Supplement

This pamphlet updates volumes 1 and 2
of the 2012 Idaho Court Rules

Prepared by the Editorial Staff
of the Publisher

MICHIE

IDAHO CODE

IDAHO COURT RULES

DECEMBER 2012 SUPPLEMENT

Compiled Under the Supervision of the
Idaho Code Commission

RICHARD F. GOODSON
R. DANIEL BOWEN JEREMY P. PISCA
COMMISSIONERS

MAX M. SHEILS, JR.
EXECUTIVE SECRETARY

MICHIE

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5042816

978-0-7698-5093-1

(Pub.42205)

PREFACE

To better serve our customers, by making our annotations more current, LexisNexis now reads, and creates annotations for, court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

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December, 2012

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IDAHO RULES OF CIVIL PROCEDURE

Rule 4(a). Process — Summons — Issuance — Time limits.

JUDICIAL DECISIONS

Time Limitation.

Six-month period for serving the summons and complaint under paragraph (2) commences running upon the first filing of a complaint naming as a defendant the party who raises the issue of untimely service. Elliott v. Verska, — Idaho —, 271 P.3d 678, 2012 Ida. LEXIS 2 (2012).

Rule 4(d)(2). Service upon individuals.

JUDICIAL DECISIONS

Analysis

Apparent Authority.
Service Requirements.

Apparent Authority.

Apparent authority is created when a principal voluntarily places an agent in such a position that a reasonable person, conversant with the business usages and nature of the particular business, is justified in believing that the agent is acting pursuant to existing authority. However, apparent authority cannot be created by the acts or statements of the alleged agent alone. Elliott v. Verska, — Idaho —, 271 P.3d 678, 2012 Ida. LEXIS 2 (2012).

Service Requirements.

Noncompliance with Idaho R. Civ. P. (4)(d)(4) and this rule is not excused, even though the requirements of due process are met; the manner of serving process cannot be ignored even when a defendant in some way receives such notice of the pending lawsuit as would satisfy the requirements of due process. Elliott v. Verska, — Idaho —, 271 P.3d 678, 2012 Ida. LEXIS 2 (2012).

Rule 4(d)(4). Service upon domestic or foreign corporations.

JUDICIAL DECISIONS

Analysis

Agent of Corporation.
Service Requirements.

Agent of Corporation.

A receptionist was not an authorized agent for service of process for a medical institute, as she was not an officer, managing or general agent, or any other agent authorized by appointment or by statute to receive service of process for the corporation. Elliott v. Verska, — Idaho —, 271 P.3d 678, 2012 Ida. LEXIS 2 (2012).

Service Requirements.

Noncompliance with I.R.C.P. (4)(d)(2) and this rule is not excused, even though the requirements of due process are met; the manner of serving process cannot be ignored even when a defendant in some way receives such notice of the pending lawsuit as would satisfy the requirements of due process. Elliott v. Verska, — Idaho —, 271 P.3d 678, 2012 Ida. LEXIS 2 (2012).

Rule 5(a). Service and filing of pleadings and other papers — Service — When required.

JUDICIAL DECISIONS

Service.

Attaching a proposed answer and counterclaim to an affidavit supporting a motion to set aside, even when the motion and affidavit are properly filed and served, does not constitute filing and service of the answer and

counterclaim. The pleadings were not properly served and adequate notice of the answer and counterclaim was not given. Cuevas v. Barraza, 152 Idaho 890, 277 P.3d 337, 2012 Ida. LEXIS 78 (2012).

Rule 5(d). Filing.

JUDICIAL DECISIONS

Failure to File

Attaching a proposed answer and counterclaim to an affidavit supporting a motion to set aside, even when the motion and affidavit are properly filed and served, does not constitute filing and service of the answer and counterclaim. The pleadings were not properly served and adequate notice of the answer and counterclaim was not given. Cuevas v. Barraza, 152 Idaho 890, 277 P.3d 337, 2012 Ida. LEXIS 78 (2012).

Rule 5(e). Filing with the court.

JUDICIAL DECISIONS

Failure to File

Attaching a proposed answer and counterclaim to an affidavit supporting a motion to set aside, even when the motion and affidavit are properly filed and served, does not constitute filing and service of the answer and counterclaim. The pleadings were not properly served and adequate notice of the answer and counterclaim was not given. Cuevas v. Barraza, 152 Idaho 890, 277 P.3d 337, 2012 Ida. LEXIS 78 (2012).

Rule 11(a)(2). Successive applications for orders or writs — Motions for reconsideration.

JUDICIAL DECISIONS

Motions for Reconsideration.

In an action for declaratory judgment to determine whether a road was public or private, the district court correctly concluded that, under paragraph (B), it could not strike an affidavit as untimely, since it was part of a motion to reconsider a summary judgment. Because appellant property owners filed their motion to reconsider two days after the final judgment was issued, it was timely and properly before the court. Kepler-Fleenor v. Fremont County, — Idaho —, 268 P.3d 1159, 2012 Ida. LEXIS 26 (2012).

Cited in: Rocky Mt. Power v. Jensen, — Idaho —, — P.3d —, 2012 Ida. LEXIS 34 (Jan. 26, 2012).

Rule 15(c). Relation back of amendments.

JUDICIAL DECISIONS

Statute of Limitations.

An amendment of a complaint to add a restaurant operator as a defendant in a slip and fall case, filed more than two years after the sustained injury, did not relate back to the time the original complaint was filed, within the two-year limitations period, where there was no evidence in the record that indicated that, while the restaurant operator may have had knowledge of the plaintiff's injury, the operator had any knowledge of the suit before expiration of the limitations period. Knowledge that an injury had occurred is not the same as knowledge of the institution of a lawsuit. Ketterling v. Burger King Corp., — Idaho —, 272 P.3d 527, 2012 Ida. LEXIS 62 (2012).

Rule 25(a)(1). Substitution of parties — Death.

DECISIONS UNDER PRIOR RULE OR STATUTE

Improper Substitution.

Client's malpractice claim sounded in tort and abated upon her death. Her breach of contract claim failed to state a claim upon which relief could be granted; therefore, the personal representative's motion to substitute as plaintiff was improperly granted. Bishop v. Owens, — Idaho —, 272 P.3d 1247, 2012 Ida. LEXIS 18 (2012).

Rule 36(a). Requests for admission.

Cited in: Benz v. D. L. Evans Bank, — Idaho —, 268 P.3d 1167, 2012 Ida. LEXIS 29 (2012).

Rule 37(c). Expenses on failure to admit.

JUDICIAL DECISIONS

Attorneys' Fees.

In a lien priority dispute, the district court did not err in awarding the buyer attorney fees against the bank because the district court found that the matter requested to be admitted was true, that the bank had no justification for its failure to admit, and that the buyer was entitled to an award of attorney fees in the sum of $9,915 as reasonable expenses incurred in proving the truth of the matter that should have been admitted. Benz v. D. L. Evans Bank, — Idaho —, 268 P.3d 1167, 2012 Ida. LEXIS 29 (2012).

Cited in: Carrillo v. Boise Tire Co., — Idaho —, 274 P.3d 1256, 2012 Ida. LEXIS 95 (2012).

Rule 40(d)(2). Disqualification for cause.

JUDICIAL DECISIONS

Objection.

Because the question of a recusal under this rule is committed to the discretion of the trial judge, absent some objection at trial, there is no decision by the trial court that an appellate court can review and no factual record from which grounds for disqualification can be discerned. Minor Miracle Prods., LLC v. Starkey, — Idaho —, 271 P.3d 1189, 2012 Ida. LEXIS 12 (2012).

Rule 41(a)(2). Dismissal by order of court.

JUDICIAL DECISIONS

Discretion of Court.

Under this rule, dismissals are to be upon order of the court and upon such terms and conditions as the court deems proper. This provision is discretionary with the trial court both as to whether a dismissal should be allowed, as well as to the terms and conditions to be imposed, if allowed. The purpose of the court's discretionary authority under this rule is to insure that the court pays due regard to the interests of both the plaintiff and defendant; dismissal of the plaintiff's action must not unfairly jeopardize the defendant's interests. Peterson v. Private Wilderness, LLC, — Idaho —, 273 P.3d 1284, 2012 Ida. LEXIS 85 (Mar. 23, 2012).

Rule 52(a). Findings by the court — Effect.

Cited in: In re Doe, 152 Idaho 910, 277 P.3d 357, 2012 Ida. LEXIS 100 (2012); McCormick Int'l USA, Inc. v. Shore, 152 Idaho 920, 277 P.3d 367, 2012 Ida. LEXIS 107 (2012).

Rule 53(e)(3). Master's report in jury actions.

JUDICIAL DECISIONS

Information needed to consider factors.

In a probate action, a personal representative was not entitled to attorney's fees under § 15-3-720 because, although his agreement with his attorney was for a lump sum, the attorney had to provide a memorandum of costs specifying at least the total time provided for his work for a determination of reasonableness under I.R.C.P. 54(e)(3). In re Estates of Bailey, — Idaho —, 284 P.3d 970, 2012 Ida. LEXIS 186 (Aug. 9, 2012).

Rule 54(b). Judgment upon multiple claims or involving multiple parties.

JUDICIAL DECISIONS

ANALYSIS

Appeal from Summary Judgment.
Attorney Fees.

Appeal from Summary Judgment.

Because appellate jurisdiction over an appeal from an interlocutory decision under this rule is limited to the rulings or orders certified by the district court, the appellate court may not consider, in an appeal from a partial summary judgment dismissing several causes of action, whether the remaining causes of action should be dismissed. Taylor v. AIA Servs. Corp., 151 Idaho 552, 261 P.3d 829 (2011).

Attorney Fees.

Even though a judgment had been certified as final pursuant to this rule, because the certified judgment did not dispose of all of the parties' claims, an appellate court could not determine the prevailing party and could not award attorney fees. Asbury Park, LLC v. Greenbriar Estate Homeowner's Ass'n, — Idaho —, 271 P.3d 1194, 2012 Ida. LEXIS 20 (2012).

Cited in: Bach v. Dawson, — Idaho —, 268 P.3d 1189, 2012 Ida. App. LEXIS 3 (2012).

Rule 54(d)(1). Costs — Items allowed.

JUDICIAL DECISIONS

ANALYSIS

Prevailing Party.
Research Expenses.

Prevailing Party.

District court abused its discretion when it declined to find the employee to be the prevailing party where, although the employee received an award far smaller than that which he sought, he defeated the employer's counterclaim and the award that he did receive was for more than a nominal amount. Oakes v. Boise Heart Clinic Physicians, PLLC, — Idaho —, 272 P.3d 512, 2012 Ida. LEXIS 64 (2012).

Since each claim in an action must be resolved before a court may determine the prevailing party, the identity of the prevailing party cannot be known until proceedings at the trial level are complete. Steel Farms, Inc. v. Croft & Reed, Inc., — Idaho —, — P.3d —, 2012 Ida. LEXIS 38 (Jan. 27, 2012).

Research Expenses.

Lender was not entitled to reimbursement of costs for online research, because routine online legal research should be one component of a firm's hourly rates. Beach v. Wells Fargo Bank, Na (In re Beach), — Bankr. —, 2011 Bankr. LEXIS 4027 (Oct. 19, 2011).

Rule 54(e)(1). Attorney fees.

Cited in: Peterson v. Private Wilderness, LLC, — Idaho —, 273 P.3d 1284, 2012 Ida. LEXIS 85 (Mar. 23, 2012).

Rule 54(e)(3). Amount of attorney fees.

JUDICIAL DECISIONS

Contractual Right.

In an architect's suit for uncompensated services, the district court did not abuse its discretion in awarding the architect $48,740 in attorney's fees, as he was the prevailing party and his request for fees was based on the legal portions of his implied-in-fact contract. Farrell v. Whiteman, — Idaho —, 268 P.3d 458, 2012 Ida. LEXIS 17 (2012).

Cited in: Noak v. Idaho Dep't of Corr., — Idaho —, 271 P.3d 703, 2012 Ida. LEXIS 8 (2012).

Rule 59(e). Motion to alter or amend a judgment.

JUDICIAL DECISIONS

Not reviewable.

Because two issues in a water rights case were first raised in a motion under this rule. those issues were not preserved for review. City of Pocatello v. State (In re SRBA Case No. 39576), 152 Idaho 830, 275 P.3d 845, 2012 Ida. LEXIS 81 (2012).

Rule 60(b). Mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, grounds for relief from judgment or order.

JUDICIAL DECISIONS

Analysis

Any Other Reason Justifying Relief.
Criminal Case.

Any Other Reason Justifying Relief.

Where appellants did not specifically allege a meritorious defense of abandonment in their verified motion to set aside a default judgment in an eviction case, but the court was able to glean that defense from a letter that was attached as an exhibit to the motion, the district court did not abuse its discretion in finding that unique and compelling circumstances existed to justify setting aside the default judgment. Maynard v. Nguyen, — Idaho —, 274 P.3d 589, 2011 Ida. LEXIS 130 (Sept. 7, 2011).

Criminal Case.

Because the dismissal of a felony conviction became final after the expiration of the time for appeal or affirmance of the dismissal on appeal, a district court's jurisdiction to amend the order expired at that time. Jurisdiction was not extended under I.C. § 37-2732 to hear a motion seeking reimbursement that was filed 10 months after the dismissal, and I.C.R.P. 60(b) and I.C.R. 35 did not apply. Even assuming the district court had subject matter jurisdiction, it lacked personal jurisdiction over the nonparty agencies that collected, disbursed, or retained the monies paid. State v. Peterson, — Idaho —, 280 P.3d 184, 2012 Ida. App. LEXIS 36 (May 21, 2012).

Rule 61. Harmless error.

JUDICIAL DECISIONS

Substantial Right.

Where there was no indication that in the court's analysis the district court relied on affidavits from two witnesses that potentially contained hearsay testimony, any error resulting from the district court's failure to strike the affidavits of the two witnesses did not affect the employee's substantial rights. Arambarri v. Armstrong, — Idaho —, 274 P.3d 1249, 2012 Ida. LEXIS 72 (2012).

Rule 75(c). Nonsummary proceedings — Commencement.

JUDICIAL DECISIONS

Court's Discretion.

The district court has the authority to impose sanctions for failure to timely comply with a court order, but it also has the discretion to not impose those sanctions once the order has been complied with. Chavez v. Canyon County, — Idaho —, 271 P.3d 695, 2012 Ida. LEXIS 5 (2012).

Rule 84(e). Method and scope of review.

JUDICIAL DECISIONS

Tax Deed.

Pursuant to § 63-1006, any person aggrieved by a county commissioners' decision to issue a tax deed can have the decision reviewed by the district court. The district court confines its review to the record from the county and can only reverse or modify the commissioners' decision if substantial rights have been prejudiced. Upon appeal, the decision reached by the district court is examined by an appellate court only to consider whether the district court correctly decided the issues presented to it. Chavez v. Canyon County, — Idaho —, 271 P.3d 695, 2012 Ida. LEXIS 5 (2012).

APPENDIX "A"

FILING FEE SCHEDULE - DISTRICT COURT AND MAGISTRATE DIVISION

DISTRICT COURT FILING FEES

COMMENCING A CIVIL ACTION

A civil action is commenced by filing a complaint, petition, application, or other document that begins a new civil lawsuit. A civil action is commenced if the clerk opens a new case file rather than filing the document in an existing case file. Whether a filing fee is charged does not depend upon the title or name of the document filed, but upon whether it commences a new case.

In a civil lawsuit, a party usually seeks to obtain an order or judgment from the court against another party. However, there are some times when a clerk will have to file a document, such as registering a trust, when it will not commence a lawsuit. In such instances, no filing fee will be charged.

Only one filing fee is charged even if the complaint, petition, or application includes two or more separate claims for relief. If the claims would have differing filing fees if they were filed as separate actions, then the appropriate fee is whichever is higher; for example, if one action was filed to have a marriage annulled or, if that were denied, to obtain a divorce, the appropriate filing fee would be the fee for filing a divorce action because it is higher than the filing fee for an annulment. Likewise, if one action was filed to compromise a minor's claim and to appoint a conservator, the appropriate filing fee would be for the appointment of a conservator.

The fee for opening any civil case not found on this schedule is $96.00, and the correct filing fee code is "A".

APPEARING IN A CIVIL ACTION (CATEGORY I)

An appearance is the first document filed by a party (other than the plaintiff or petitioner) in an existing civil action, regardless of whether it is filed *pro se* or through counsel and regardless of the title of the document (e.g., "notice of appearance," "answer," "motion," or other title).

If a party acting *pro se* has already filed an appearance in an action and then an attorney later files a "notice of appearance" to appear on behalf of that party, the attorney's "notice of appearance" does not constitute an appearance for the purpose of assessing a filing fee because the party has already appeared in the action *pro se*.

Fee Category	Idaho Code Fund	Judges Retire. Fund	County Facility Fund	State	State/ Guard -ship Project Fund	County Dist. Ct. Fund	ISTARS Tech. Fund	Senior Mag. Judges Fund	Total
A. All initial civil case filings of any type not listed in categories B-H, including: 1. Adoptions 2. Adoption and Termination of parental rights 3. Termination of parental rights 4. Personal injury 5. Petition for formal probate 6. Application for informal probate 7. Name change 8. Permission to marry 9. Child Support (unless filed by DHW) 10. Habeas by prisoners 11. Paternity action 12. Unlawful detainer 13. Defacto custodian 14. Relief from firearm disability	10.00	26.00	10.00	17.00		17.00	10.00	6.00	96.00

B. 1. Divorce State portion includes additional $20 displaced homemaker fund and additional $20 domestic violence fund district court fund includes $5.00 taken from the State General Fund fee, which shall be separately identified and deposited in the District Court Fund, for establishing a uniform system of qualifying counselors in domestic violence cases. I.C. § 31-3201A(q) a. With minor children b. Without minor children	10.00	26.00	10.00	52.00		23.00	10.00	6.00	137.00
2. Motion to reopen or modify divorce a. With minor children b. Without minor children	10.00	26.00	10.00	15.00		17.00		6.00	84.00
3. Amended complaint to convert an action that was not one for divorce (e.g. separate maintenance) into an action for divorce ($1.00 for court clerk fees I.C. § 39-266 & $20 for the displaced homemaker account I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213)				41.00					41.00
C. Small claims		26.00	10.00			7.00		6.00	49.00
D. Summary administration of small estates			10.00	17..00		17.00	10.00	6.00	60.00
E. Petition for release from common law lien						35.00			35.00

F. Petition for entry of judgment on worker's comp award	10.00	26.00	10.00			9.00		6.00	61.00
G. 1.Guardianships a. Initial Petition motion or appearance by any person on behalf of a minor. b. Initial Petition motion or appearance by any person on behalf of an incapacitated person.	10.00	26.00	10.00	17.00	50.00	17.00	10.00	6.00	146.00
2. Conservatorship a. Initial Petition motion or appearance by any person on behalf of a minor. b. Initial Petition motion or appearance by any person on behalf of an incapacitated person.	10.00	26.00	10.00	17.00	50.00	17.00	10.00	6.00	146.00
3. Joint petition for guardianship/ conservatorship or joint petition for receipt and acceptance of foreign guardianship a. where same party is guardian and conservator of a minor person b. where same party is guardian and conservator of incapacitated person	10.00	26.00	10.00	17.00	50.00	17.00	10.00	6.00	146.00

c. where different parties are petitioners for guardian and conservator of a minor									
d. where different parties are petitioners for guardian and conservator of incapacitated person (considered two filings)	20.00	52.00	20.00	17.00	50.00	17.00	10.00	6.00	192.00
4. Status reports guardianship					25.00				25.00
5. Intermediate or final account of conservator					41.00	9.00			50.00
6. Petition for distribution of estate in conservatorship				13.00	41.00	6.00		6.00	66.00
7. Inventories by conservator					41.00				41.00

H. Case filings with no fee 1. Cases brought under Ch. 3, Title 66, I.C. for commitment of mentally ill persons 2. Child Protective cases 3. Demand for bond before personal representative is appointed in probate 4. Petition for sterilization 5. Judicial consent for abortion petitions 6. Registration of trusts and renunciations 7. Petition to compromise minor's claim 8. Petition for civil protection order or to enforce foreign CPO pursuant to Ch. 63, Title 39, I.C. pleadings 9. Proceedings to suspend a license for non-payment of child support 10. Post-conviction act proceedings 11. Stipulation for entry of judgment 12. Filing of a custody decree from another state 13. BAC license suspension 14. Child support proceedings filed by DHW 15. Fugitive warrants 16. Court initiated contempt									No fee

I. The fees set out in Category I apply to the first document filed by a party <u>other than</u> the plaintiff or petitioner no matter what the document is entitled									
1. Initial Appearance by persons other than the plaintiff or petitioner									
a. Motion for Permissive Intervention	10.00	26.00		10.00		4.00	10.00	6.00	66.00
– Defacto custodian	10.00	26.00		10.00		4.00	10.00	6.00	66.00
2. Small Claims									No fee
3. Stipulation for entry of judgment									No fee
4. Any objection or motion filed in a guardianship or conservatorship by the minor or alleged incapacitated person									No fee
5. Appearing after judgment when the party has not previously appeared	10.00	26.00	10.00			9.00	10.00	6.00	71.00
J. Additional filings in probate and trusts: the following fees shall be collected from any person filing the following documents, whether or not the person has appeared previously:									
1. Probate									
a. petition for distribution of estate				13.00		6.00		6.00	25.00
b. demand for notice						9.00			9.00

c. demand for bond after appointment of personal representative						9.00			9.00
d. intermediate or final accounting of personal rep						9.00			9.00
e. petition for approval of compromise				10.00		4.00			14.00
f. filing of copy of appointment of foreign personal representative				10.00		17.00			27.00
2. Trusts and Renunciations a. intermediate or final accounting of trustee						9.00			9.00
b. petition for final distribution of estate				13.00		6.00		6.00	25.00
K. Special Filings									
1. Order granting change of venue (pay to new county).						9.00			9.00
2. Petition to reopen a case after no activity for one year	10.00	26.00	10.00			9.00		6.00	61.00
3. Third party complaint – This fee is *in addition* to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case						8.00		6.00	14.00

4. Cross claim (defendant v. defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case						8.00		6.00	14.00
a. For divorce when the complaint did not allege a claim for divorce. The $41 fee is in addition to the fee for a general cross-claim. ($1 for court clerk fee, I.C. § 39-266 & $20 for displaced homemaker account, I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213)				41.00		8.00		6.00	55.00
5. Counterclaim for divorce when the complaint did not allege a claim for divorce *($1.00 for court clerk fees I.C. § 39-266 & $20 for the displaced homemaker account I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213)				41.00					41.00
6. Renewing a judgment						9.00			9.00
7. Filing a foreign judgment						7.00			7.00
L. Appeals									
1. Small claims Dept to magistrate	10.00	26.00	10.00			9.00		6.00	61.00
2. Magistrate Division to District court	10.00	26.00	10.00			9.00		6.00	61.00

3. Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court	10.00	26.00	10.00	17.00		17.00	10.00	6.00	96.00
a. Petition for judicial review of IDWR adjudication of water rights	10.00	26.00	10.00	17.00		17.00	10.00	6.00	96.00
4. Civil appeal or cross-appeal to Supreme Court (with exception of a. and b. below). The clerk of the district court shall collect the entire fee and remit the $86.00 fee to the Supreme Court with a certified copy of the notice of appeal. Rule 23(b), I.A.R.)									
a. Post-Conviction	94.00								109.00
b. Habeas Corpus	Sup. Ct.					9.00		6.00	No fee No fee

IDAHO RULES OF EVIDENCE

ARTICLE II. JUDICIAL NOTICE.

Rule 201. Judicial notice of adjudicative facts.

JUDICIAL DECISIONS

Judicial Notice Improper.

In a will contest, there was no error in declining to take judicial notice of affidavits and reports relied on during the testator's guardianship and conservatorship proceeding three months before the will was executed, which documents were offered to demonstrate lack of testamentary capacity at the time of the will's execution. The documents constituted hearsay opinions of individuals regarding capacity and hearsay-within-hearsay declarations of the testator. Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380, 2012 Ida. LEXIS 108 (2012).

ARTICLE IV. RELEVANCY AND ITS LIMITS.

Rule 401. Definition of relevant evidence.

JUDICIAL DECISIONS

Impeachment Evidence.

Evidence that a witness and defendant associated with each other, although members of different gangs, bore directly on a witness's credibility and was, therefore, relevant as impeachment evidence for the purpose of showing bias. Evidence that they were closely associated, and that their respective gang memberships were a component of that affiliation, was relevant. State v. Thumm, — Idaho —, 285 P.3d 348, 2012 Ida. App. LEXIS 44 (July 25, 2012).

Cited in: State v. Critchfield, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 51 (Aug. 27, 2012).

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

JUDICIAL DECISIONS

Impeachment Evidence.

Defendant was entitled to a new trial based on the erroneous exclusion of testimony by an expert in law enforcement interview techniques, and because the expert's evidence was relevant to challenge the reliability of the victims' testimony about instances of sexual abuse; the error was not harmless. State v. Critchfield, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 51 (Aug. 27, 2012).

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

JUDICIAL DECISIONS

Analysis

Evidence Held Admissible.
Evidence Held Inadmissible.
Probative Value Outweighed Prejudicial Impact.

Evidence Held Admissible.

During defendant's trial for aggravated battery, the court did not err in allowing a detective to testify that the detective believed the person in a photograph to be defendant; defendant's claim of lack of probative value

was without merit and defendant identified no unfair prejudice. State v. Salazar, — Idaho —, 278 P.3d 426, 2012 Ida. App. LEXIS 14 (2012).

Evidence Held Inadmissible.

In rape case, the court erred by admitting prior acts evidence because an assertion, and defendant's admission, that he had sexual intercourse with a prior complainant while she was sleeping, that that was a "bad thing" that he had done, and that he was on felony probation for such an act was a classic example of evidence which posed the danger that it would stir the passion of the jury as to sweep them beyond a rational consideration of guilt or innocence of the crime on trial. State v. Jones, — Idaho —, — P.3d —, 2011 Ida. App. LEXIS 76 (Sept. 12, 2011).

Probative Value Outweighed Prejudicial Impact.

During defendant's trial for sexual abuse of a child and rape, the court properly allowed the testimony of alleged prior (20 to 40 years prior), uncharged sexual conduct of defendant to be presented; considering that defendant made statements identifying the targets of his criminal behavior and his reasons for targeting those individuals, the trial court did not err in concluding that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. State v. Pepcorn, — Idaho —, 273 P.3d 1271, 2012 Ida. LEXIS 83 (2012).

Evidence that a witness and defendant associated with each other, although members of different gangs, bore directly on the witness's credibility and was, therefore, relevant as impeachment evidence for the purpose of showing bias. Evidence that they were closely associated, and that their respective gang memberships were a component of that affiliation, was relevant. Also relevant was evidence that it was a tenet of the gangs that they cover for each other, including lying on behalf of other gang members. State v. Thumm, — Idaho —, 285 P.3d 348, 2012 Ida. App. LEXIS 44 (July 25, 2012).

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

JUDICIAL DECISIONS

Analysis

Evidence Held Admissible.
Notice.
Prior Acts.

Evidence Held Admissible.

During defendant's trial for sexual abuse of a child and rape, the court properly allowed the testimony of alleged prior (20 to 40 years prior), uncharged sexual conduct of defendant to be presented; the evidence showed that defendant made a conscious choice to deliberately molest or abuse his wife's siblings and their children. State v. Pepcorn, — Idaho —, 273 P.3d 1271, 2012 Ida. LEXIS 83 (2012).

Notice.

The notice requirement of subsection (b) is mandatory, and the failure to comply creates a bar to admissibility. State v. Whitaker, 152 Idaho 945, 277 P.3d 392, 2012 Ida. App. LEXIS 10 (2012).

Prior Acts.

Defendant's viewing pornography on an occasion entirely separate from the charged offenses was not part of the charged criminal episode, nor was it necessary in order to provide a complete account of the charged crimes. As that evidence implicated defendant's character, but was not intrinsic to the crimes charged, it was subject to the strictures of subsection (b). State v. Whitaker, 152 Idaho 945, 277 P.3d 392, 2012 Ida. App. LEXIS 10 (2012).

The district court erred in admitting evidence of two prior incidents under subsection (b), where the two incidents that the state presented at trial do not tend to show that the defendant had a prior plan, design, or system which included the doing of the act charged as part of its consummation nor show steps allegedly effectuating a plan to accomplish the charged offense, sexual abuse of a child under the age of 16. State v. Coleman, 152 Idaho 872, 276 P.3d 744, 2012 Ida. App. LEXIS 19 (2012).

ARTICLE V. PRIVILEGES.

Rule 502. Lawyer-client privilege.

JUDICIAL DECISIONS

Required Relationship.

In determining whether an attorney-client relationship exists, one must look to the putative client's subjective belief, which must be reasonable under the circumstances, or to assent by both the putative client and attorney. The burden of showing that a privilege applies is on the party asserting the privilege. LLC, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 114687 (Oct. 4, 2011).

ARTICLE VI. WITNESSES.

Rule 608. Evidence of character and conduct of witness.

JUDICIAL DECISIONS

Evidence Held Improper.

Trial court did not err by excluding testimony of three witnesses that the infant victim's mother had been unfaithful to defendant, because it was not admissible. It was extrinsic evidence of specific instances of the mother's conduct, in violation of subsection (b) of this rule, and because the evidence was not relevant under Rule 404 of the Rules of Evidence. State v. Carson, 151 Idaho 713, 264 P.3d 54 (2011).

Rule 609. Impeachment by evidence of conviction of crime.

JUDICIAL DECISIONS

Analysis

Determination of Relevance.
Test.

Determination of Relevance.

Where defendant was charged with numerous sex offenses against a girl from the time she was 10 until she was 17, the trial court did not abuse its discretion in precluding defendant from impeaching the victim's younger brother with a theft conviction that occurred one month before defendant's retrial: given the limited testimony of the witness and given that he was not the alleged victim or a party to the action, his credibility was not central to defendant's case and the probative value of his theft conviction was very low. State v. Grist, — Idaho —, 275 P.3d 12, 2012 Ida. App. LEXIS 15 (2012).

Test.

In examining the varied relationships between felony convictions and witness credibility, the Idaho courts have divided felonies into three categories having varying degrees of probative value on the issue of credibility. Crimes in the first category, such as perjury, are intimately connected to a person's veracity and credibility, while crimes in the second category, like robbery and burglary, are somewhat less relevant to credibility because they do not deal directly with veracity and have only a general relationship with honesty. Offenses in the third category, which include crimes of passion and acts of violence that are the product of emotional impulse, have been said to have little or no direct bearing on honesty and veracity. State v. Grist, — Idaho —, 275 P.3d 12, 2012 Ida. App. LEXIS 15 (2012).

Under this rule, the trial court must apply a two-prong test to determine whether evidence of a prior felony conviction should be admitted: (1) the court must determine whether the fact or nature of the conviction is relevant to the credibility of the witness; and (2) if so, the court must determine whether the probative value of the evidence outweighs its prejudicial effect. State v. Grist, — Idaho —, 275 P.3d 12, 2012 Ida. App. LEXIS 15 (2012).

Rule 611. Mode and order of interrogation and presentation.

JUDICIAL DECISIONS

Cross-Examination.

—Experts.

In an action for wrongful death based on medical negligence, the district court did not abuse its discretion in barring defendant doctor from questioning plaintiffs' expert witness on cross-examination about his opinion as to whether other parties, who settled out of court and had been dismissed from the case had breached the standard of care. The line of proposed questioning was outside the scope of subsection (b) of this rule, because it did nothing to impeach the expert as it was not inconsistent with his direct testimony. Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY.

Rule 701. Opinion testimony by lay witness.

JUDICIAL DECISIONS

Analysis

Evidence Held Admissible.
Fundamental Error.

Evidence Held Admissible.

Testimony by a toddler's family members that the toddler's behaviors changed for the worse immediately following a car accident was admissible because the ability to observe a young family member's progress from infant to child was not outside of the usual and ordinary experience of the average person. Carrillo v. Boise Tire Co., — Idaho —, 274 P.3d 1256, 2012 Ida. LEXIS 95 (2012).

During defendant's trial for aggravated battery, the court did not err in allowing a detective to testify that the detective believed the person in a photograph to be defendant; although the foundational testimony was limited, it referred to a 20-minute period in which the detective observed defendant at a time when defendant's appearance differed from defendant's appearance at trial. State v. Salazar, — Idaho —, 278 P.3d 426, 2012 Ida. App. LEXIS 14 (2012).

Fundamental Error.

Defendant's claim that a prosecutor committed misconduct at trial by asking defendant on cross-examination whether other witnesses had lied under oath did not implicate a constitutional right and, therefore, did not present an issue of fundamental error. State v. Herrera, — Idaho —, 266 P.3d 499 (2011).

Rule 702. Testimony by experts.

Cited in: State v. Critchfield, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 51 (Aug. 27, 2012).

ARTICLE VIII. HEARSAY.

Rule 801. Definitions.

JUDICIAL DECISIONS

Purpose of Testimony.

Will contestant's testimony of the testator's statements, which focused entirely on the testator's negative feelings toward her children, were properly excluded because the statements were inadmissible hearsay and irrelevant. They did not necessarily speak to her mental condition or particular susceptibility to influence, but rather were aimed at proving their truth: that she was angry with her children, that they were not worthy to inherit, and that she did not mean for them to

inherit. Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380, 2012 Ida. LEXIS 108 (2012).

Rule 802. Hearsay rule.

JUDICIAL DECISIONS

Evidence Held Inadmissible.

Will contestant's testimony of the testator's statements, which focused entirely on the testator's negative feelings toward her children, were properly excluded because the statements were inadmissible hearsay and irrelevant. They did not necessarily speak to her mental condition or particular susceptibility to influence, but rather were aimed at proving their truth: that she was angry with her children, that they were not worthy to inherit, and that she did not mean for them to inherit. Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380, 2012 Ida. LEXIS 108 (2012).

Rule 804. Hearsay exceptions; declarant unavailable.

Cited in: Wooden v. Martin (In re Conway), 152 Idaho 933, 277 P.3d 380, 2012 Ida. LEXIS 108 (2012).

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION.

Rule 901. Requirement of authentication or identification.

JUDICIAL DECISIONS

Public Records and Reports.

Photocopies of documents from defendant's "penitentiary packet" were admissible to prove his persistent violator status. The documents in the packet were certified by each court where defendant had been convicted, and the packet itself was a record required to be kept by the state department of corrections. Photocopies of the contents of that packet were certified by the custodian of the packet. Altogether the elements excused the state from producing the original copy of defendant's judgments of conviction. State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

Rule 902. Self-authentication.

JUDICIAL DECISIONS

Public Records.

—Witness's Affidavit.

Enhancement of sentence based in part on a "penitentiary packet" containing authenticated photocopies of certified copies of prior felony conviction judgments was not an abuse of discretion. The state department of corrections was legally required to keep certified copies of defendant's judgments, and was a proper authority to certify to the authenticity of the photocopies. State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS.

Rule 1002. Requirement of original.

Cited in: State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

Rule 1005. Public records.

JUDICIAL DECISIONS

Photocopies of Certified Copies of Judgments of Conviction.

Enhancement of sentence based in part upon a penitentiary packet containing authenticated photocopies of certified copies of prior felony conviction judgments was proper because the state department of corrections was legally required to keep certified copies of defendant's judgments and was therefore authorized to certify to the authenticity of the photocopies under Idaho R. Evid. 902(4). State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

IDAHO CRIMINAL RULES

Rule
5.1. Preliminary hearing — Probable cause hearing — Discharge or commitment of defendant — Procedure.

Rule
16. Discovery and inspection.

Rule 2. Purpose and construction — Title — District court rules.

JUDICIAL DECISIONS

Psychological Evaluation.

Trial court erred under subsection (d) in denying defendant's motion for a presentence psychological evaluation during the sentencing phase of trial, because the record demonstrated that defendant's mental condition was a significant factor in determining the sentence; the trial court had explicitly stated its beliefs that "certain mental factors" existed and that defendant needed psychological treatment. State v. Hanson, — Idaho —, 271 P.3d 712, 2012 Ida. LEXIS 6 (2012).

Rule 5.1. Preliminary hearing — Probable cause hearing — Discharge or commitment of defendant — Procedure.

(a) **Preliminary hearing.** Unless indicted by a grand jury, a defendant, when charged in a complaint with any felony, is entitled to a preliminary hearing. If the defendant waives the preliminary hearing, the magistrate shall forthwith file a written order in the district court holding the defendant to answer. If the defendant does not waive the preliminary hearing, the magistrate shall fix a time for the preliminary hearing to be held within a reasonable time, but in any event not later than fourteen (14) days following the defendant's initial appearance if the defendant is in custody and no later than twenty-one (21) days after the initial appearance if the defendant is not in custody. With the consent of the defendant and upon showing of good cause, taking into account the public interest and prompt disposition of criminal cases, time limits in this subsection may be extended. In the absence of such consent by the defendant, time limits may be extended only upon a showing that extraordinary circumstances exist, including disqualification of the magistrate by the defendant pursuant to Rule 25.

(b) **Probable cause finding.** If from the evidence the magistrate determines that a public offense has been committed and that there is probable or sufficient cause to believe that the defendant committed such offense, the magistrate shall forthwith hold the defendant to answer in the district court. The finding of probable cause shall be based upon substantial evidence upon every material element of the offense charged; provided that hearsay in the form of testimony, or affidavits, may be admitted to show the existence or nonexistence of business or medical facts and records, judgments and convictions of courts, ownership of real or personal property and reports of scientific examinations of evidence by state or federal agencies or officials or by state-certified laboratories, provided the magistrate determines the source of said evidence to be credible. Provided, nothing in this

rule shall prevent the admission of evidence under any recognized exception to the hearsay rule of evidence. The defendant shall be entitled to cross-examine witnesses produced against the defendant at the hearing and may introduce evidence in defendant's own behalf. Motions to suppress must be made in a trial court as provided in Rule 12; provided, if at the preliminary hearing the evidence shows facts which would ultimately require the suppression of evidence sought to be used against the defendant, such evidence shall be excluded and shall not be considered by the magistrate in his determining probable cause. A record of the proceedings shall be made by stenographic means or recording devices. Affidavits under this rule may have the signature of the affiant and the person who administered the oath in electronic form, as well as the notary seal.

(c) **Discharge of defendant.** If from the evidence the magistrate does not determine that a public offense has been committed or that there is not probable or sufficient cause to believe that the defendant committed such offense, the magistrate shall dismiss the complaint and discharge the defendant.

(d) **Records.** After concluding the proceeding, the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding. (Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended March 9, 1999, effective July 1, 1999; amended November 20, 2012, effective January 1, 2013.)

Rule 7. Indictment and information.

JUDICIAL DECISIONS

Indictment or Information.

Informations are of equal dignity with indictments, subject to the limitations that a defendant may only be accused by information after commitment by a magistrate and that an information cannot be issued if the charge has been previously brought, and ignored by, a grand jury. Warren v. Craven, — Idaho —, 271 P.3d 725, 2012 Ida. App. LEXIS 8 (2012).

Rule 10. Arraignment on indictment or information.

JUDICIAL DECISIONS

Reasonable Time.

No violation of this rule occurred where a trial court failed to inform defendant that he was entitled to have at least 24 hours to consider a plea on an amended information, as the defendant did not indicate that he needed any additional time to plead not guilty. State v. Herrera, — Idaho —, 266 P.3d 499 (2011).

Rule 11. Pleas.

JUDICIAL DECISIONS

Conditional Plea.

A plea of guilty, if voluntarily and knowingly made, is conclusive as to the defendant's guilt and waives all non-jurisdictional defects in prior proceedings against the defendant. However, a defendant may preserve such defects or issues by entering a conditional guilty plea pursuant to paragraph (a)(2). State v. Manzanares, — Idaho —, 272 P.3d 382, 2012 Ida. LEXIS 9 (2012).

Rule 16. Discovery and inspection.

(a) **Automatic disclosure of evidence and material by the prosecution.** As soon as practicable following the filing of charges against the accused, the prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control, or which thereafter comes into the prosecuting attorney's possession or control, which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefor. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or with reference to the particular case have reported, to the office of the prosecuting attorney.

In addition, the office of the prosecuting attorney shall disclose the general nature of evidence of other crimes, wrongs, or acts, it intends to introduce at trial in accordance with the provisions of Rule 404(b) of the Idaho Rules of Evidence.

(b) **Disclosure of evidence and materials by the prosecution upon written request.** Except as otherwise hereinafter provided in this rule, the prosecuting attorney shall at any time following the filing of charges, upon written request by the defendant, disclose the following information, evidence and material to the defendant, which shall not be filed with the court, unless otherwise ordered.

(1) **Statement of defendant.** Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.

(2) **Statement of a co-defendant.** Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person

known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

(3) **Defendant's prior record.** Upon written request of the defendant, the prosecuting attorney shall furnish the defendant such copy of the defendant's prior criminal record, if any, as is then or may become available to the prosecuting attorney.

(4) **Documents and tangible objects.** Upon written request of the defendant, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody or control of the prosecuting attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant.

(5) **Reports of examinations and tests.** Upon written request of the defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.

(6) **State witnesses.** Upon written request of the defendant the prosecuting attorney shall furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney. The prosecuting attorney shall also furnish upon written request the statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case unless a protective order is issued as provided in Rule 16(k).

(7) **Expert witnesses.** Upon written request of the defendant the prosecutor shall provide a written summary or report of any testimony that the state intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of I.C. § 18-207. The prosecution is not required to produce any materials not subject to disclosure under paragraph (f) of this Rule. This subsection does not require disclosure of expert witnesses, their opinions, the facts and data for those opinions, or the witness's qualifications, intended only to rebut evidence or theories that have not been disclosed under this Rule prior to trial.

(8) **Police reports.** Upon written request of the defendant the prosecuting attorney shall furnish to the defendant reports and memoranda in

possession of the prosecuting attorney which were made by a police officer or investigator in connection with the investigation or prosecution of the case.

(9) **Disclosure by order of the court.** Upon motion of the defendant showing substantial need in the preparation of the defendant's case for additional material or information not otherwise covered by this Rule 16(b), and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order the additional material or information to be made available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(c) **Disclosure of evidence by the defendant upon written request.** Except as otherwise hereinafter provided in this rule, the defendant shall at any time following the filing of charges against the defendant, upon written request by the prosecuting attorney, disclose the following information, evidence and material to the prosecuting attorney, which shall not be filed with the court, unless otherwise noted.

(1) **Documents and tangible objects.** Upon written request of the prosecuting attorney, the defendant shall permit the prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at the trial.

(2) **Reports of examinations and tests.** Upon written request of the prosecuting attorney, the defendant shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) **Defense witness.** Upon written request of the prosecuting attorney, the defendant shall furnish the state a list of names and addresses of witnesses the defendant intends to call at trial.

(4) **Expert witnesses.** Upon written request of the prosecutor the defendant shall provide a written summary or report of any testimony that the defense intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of I.C. § 18-207. The defense is not required to produce any materials not subject to disclosure under paragraph (h) of this Rule, or any material otherwise protected from disclosure by his constitutional rights.

(d) **Redacting protected information from responses to discovery.** The party providing discovery may redact protected information from the information or material provided.

(1) Protected information means:

A. Contact information. The home addresses, business addresses, telephone numbers (including cell phones), and email addresses of an alleged victim, or of a witness, or of the spouse, children, or other close family members of the alleged victim or witness, and the places where any of such persons regularly go, such as schools and places of employment and worship.

B. Personal identifying information. The dates of birth and social security numbers of any persons other than the defendant.

C. Private information. Personal identification numbers (PINs), passwords, financial account numbers, information relating to financial transaction cards, and medical information protected by federal law that is not directly related to the crime charged.

(2) A prosecuting attorney who redacts protected information shall follow the following procedure:

A. If the defendant is represented by counsel, the prosecuting attorney shall serve defendant's counsel with a redacted copy of the discovery printed on white paper simultaneously with an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from white. The defendant's attorney, including appellate counsel, shall not disclose the protected information to the defendant or to a member of the defendant's family without the consent of the prosecuting attorney or an order of the court upon a showing of need.

B. If the defendant is not represented by counsel, the prosecuting attorney shall serve the defendant with a redacted copy of the discovery and, within seven (7) days of doing so, even if the disclosure was not in response to a discovery request, shall file with the court and serve upon the defendant a motion for a protective order with respect to the redacted information.

(3) A defense attorney or defendant who redacts protected information shall serve the prosecuting attorney with a redacted copy of the discovery printed on white paper simultaneously with an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from white. The state's attorney, including appellate counsel, shall not disclose the protected information to the alleged victim or to a member of the alleged victim's family without the consent of the defendant or an order of the court upon a showing of need.

(e) **Failure to make written request, waiver.**

(1) Any request by a party for information, evidence or material under subsections (b) and (c) of this rule must be in writing with the original document filed with the court and a copy served upon the prosecuting attorney or the defense attorney. Failure to so file and serve such request in writing, shall constitute a waiver of the right to discovery under

subsections (b) and (c) of this rule. If no written request for discovery is so filed and served by the defendant, the defendant shall not be permitted to raise as error in any subsequent proceeding the failure of the prosecution to disclose the information described in subsection (b) of this rule.

(2) **Form of request.** A request for the information, evidence and material under subsection (b) of this rule shall be in substantially the following form:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ____

STATE OF IDAHO,	)	
Plaintiff,	)	Case No. _____
v.	)	REQUEST FOR
_____,	)	DISCOVERY
Defendant.	)	

TO: THE (PROSECUTING ATTORNEY OF _____COUNTY) (DEFENDANT):

PLEASE TAKE NOTICE that the undersigned pursuant to Rule 16 of the Idaho Criminal Rules request discovery and inspection of the following information, evidence and materials:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

The undersigned further requests permission to inspect and copy said information, evidence and materials on the _____ day of ____, 20____, at _____.

Dated this _____ day of _____, 20____.

_____
Attorney for (Plaintiff) (Defendant)

(CERTIFICATE OF SERVICE)

(f) **Response to request, failure to file a response.**

(1) **Response to request.** The party upon whom a request has been served shall file and serve a written response within fourteen (14) days of service of the request by filing the original copy with the court and serving a copy upon the opposing party which shall state one or more of the following:

A. That the response has already been complied with and that the inquiring party has been furnished the information, evidence and material listed in the request.

B. That there is no objection to the discovery of the information, evidence and materials sought by the request and that the opposing party shall be permitted discovery at a time and place certain.

C. That the responding party objects to part or all of the information, evidence and materials sought to be discovered in the response, which objection shall be specific and shall state the grounds for the objection.

(2) **Failure to comply.** Unless otherwise ordered by the court upon the showing of good cause or excusable neglect, the failure to file and serve a response within the time prescribed by this rule shall constitute a waiver of any objections to the request and shall be grounds for the imposition of sanctions by the court.

(3) A response to a request shall be in substantially the following form:

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

STATE OF IDAHO,	)	
Plaintiff,	)	Case No. _____
v.	)	RESPONSE TO
_____,	)	REQUEST FOR DISCOVERY
Defendant.	)	

COMES NOW the (Plaintiff) (Defendant) and submits the following Response to the Request for Discovery:

(Plaintiff) (Defendant) has complied with such request by _____

_____

_____

(or)

(Plaintiff) (Defendant) will comply with such request by _____

_____

_____

(and/or)

(Plaintiff) (Defendant) objects to (all of the request) (that part of the request for the discovery of _____

_____.)

The grounds for this objection are as follows: _____

_____

_____

_____

Dated this _____ day of _____, 20____.

_____

Attorney for (Plaintiff) (Defendant)

(CERTIFICATE OF SERVICE)

ACKNOWLEDGMENT OF DISCOVERY

(Optional)

The undersigned hereby acknowledges that discovery has been permitted of the following information, evidence and materials pursuant to the Request for Discovery.

_____

_____

_____

_____

_____

Dated this _____ day of _____, 20____.

_____

Attorney for (Plaintiff) (Defendant)

(g) **Prosecution information not subject to disclosure.**

(1) **Work product.** Disclosure shall not be required of legal research or of records, correspondence, reports of memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(2) **Informants.** Disclosure shall not be required of an informant's identity unless such informant is to be produced as a witness at a hearing or trial, subject to any protective order under Rule 16(k) or a disclosure order under Rule 16(b)(8).

(h) **Defense information not subject to disclosure.** Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant or state or defense witnesses, or prospective state or defense witnesses to the defendant, defendant's agents or attorneys.

(i) **Failure to call witnesses.** The fact that a witness's name is on a list furnished under this rule and that witness is not called shall not be commented upon at the trial.

(j) **Continuing duty to disclose.** If, subsequent to compliance with a request issued pursuant to this rule, and prior to or during trial, a party discovers additional evidence or the evidence of an additional witness or witnesses, or decides to use additional evidence, witness or witnesses, such evidence is automatically subject to discovery and inspection under such prior request and such party shall promptly notify the other party or that party's attorney and the court of the existence of such additional evidence or the names of such additional witness or witnesses in order to allow the other party to make an appropriate request for additional discovery or inspection.

(k) **Orders for discovery.** If a party has failed to comply with a request for discovery under this rule, the court upon motion of a party, may, order a party to permit the discovery or inspection, prohibit the discovery of part or all of the information, evidence or material sought to be discovered, or enter such other order as it deems just in the circumstances. An order of the court granting discovery under this rule shall specify the time, place and manner of making the discovery and inspection permitted and prescribe such terms and conditions as are just.

(l) **Protective orders.** Upon a sufficient showing, after notice and hearing, the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate, including an order denying a request for disclosure of names and addresses of witnesses or others who may be subjected to economic, physical or other harm or coercion. The court may permit a party to make such showing in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief after such showing, the entire text of the party's statement shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal. (Adopted December 27, 1979, effective July 1, 1980; am. February 20, 1980, effective July 1, 1980; amended March 27, 1989, effective July 1, 1989; amended March 9, 1999, effective July 1, 1999; amended March 28, 2007, effective July 1, 2007; amended February 9, 2012, effective July 1, 2012; amended November 20, 2012, effective January 1, 2013.)

Rule 21. Change of venue.

JUDICIAL DECISIONS

Pretrial Publicity.

Trial court did not err under this rule in denying defendant's motion for a change of venue during a trial for grand theft of approximately 20 calves, because the presumption of prejudice did not apply; pretrial publicity surrounding unrelated charges for attempted murder and solicitation of murder was relatively factual and non-inflammatory. State v. Hadden, — Idaho —, 271 P.3d 1227, 2012 Ida. App. LEXIS 2 (2012).

Trial court did not err in denying defendant's motions for a change of venue, as it was apparent that defendant could receive a fair trial; the jurors exposed to pretrial publicity testified that they could be unbiased and the nature of the pretrial publicity was relatively factual and noninflammatory. State v. Hadden, — Idaho —, 271 P.3d 1227, 2012 Ida. App. LEXIS 2 (2012).

Publicity by itself does not require a change of venue, and error cannot be predicated on the mere existence of pretrial publicity concerning a criminal case. However, a defendant's inability to make a detailed and conclusive showing of prejudice is not a proper

ground for refusing to change venue, as prejudice seldom can be established or disproved with certainty. Rather, it is sufficient for the accused to show there was a reasonable likelihood that prejudicial news coverage prevented a fair trial in violation of the Sixth Amendment to the United States Constitution. State v. Hadden, — Idaho —, 271 P.3d 1227, 2012 Ida. App. LEXIS 2 (2012).

Rule 29.1. Motion for mistrial.

JUDICIAL DECISIONS

Mistrial Denied.

Trial court's denial of a mistrial was not reversible error, because a disclosure of a previous trial and appeal was harmless considering the overwhelming evidence of guilt presented at trial and the curative instruction given by the trial court. State v. Watkins, — Idaho —, 274 P.3d 1279, 2012 Ida. App. LEXIS 26 (2012).

Although a State's witness purportedly referenced defendant's alleged gang affiliation, a mistrial was not warranted. The passing reference to "my homie" and the "hood," and a gesture to a neck tattoo were not necessarily indicative of gang affiliation. Moreover, the allegedly prejudicial testimony did not contribute to the verdict in any meaningful way. State v. Thumm, — Idaho —, 285 P.3d 348, 2012 Ida. App. LEXIS 44 (July 25, 2012).

Rule 30. Instructions and communications with jury.

JUDICIAL DECISIONS

Failure to Object.

Ordinarily, a party may not claim a jury instruction was erroneous unless the party objected to the instruction prior to the start of jury deliberations. However, even absent a timely objection to the trial court, a narrow exception exists for those issues rising to the level of fundamental error. The Idaho supreme court has clarified the fundamental error doctrine applicable where an alleged error was not followed by a contemporaneous objection. Such review includes a three-pronged inquiry wherein the defendant bears the burden of persuading the appellate court that the alleged error: (1) violates one or more of the defendant's unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless. If the defendant persuades the appellate court that the complained of error satisfies this three-prong inquiry, then the appellate court shall vacate and remand. State v. Hadden, — Idaho —, 271 P.3d 1227, 2012 Ida. App. LEXIS 2 (2012).

Rule 32. Standards and procedures governing presentence investigations and reports.

JUDICIAL DECISIONS

Analysis

Contents of Report.
Investigator's Comments.
Psychological Evaluation.

Contents of Report.

Defendant failed to show an abuse of discretion in declining to strike portions of the presentence investigation report because defendant was unable to show any of the information to which he objected or which he rebutted was found to be unreliable or inaccurate by the district court. State v. Carey, — Idaho —, 274 P.3d 21, 2012 Ida. App. LEXIS 23 (2012).

Investigator's Comments.

Presentence investigation report did not violate subsection (c) of this rule; there was no evidence that the trial judge saw the investigator's comments as a recommendation of a fixed-life sentence after defendant was convicted of first-degree murder and, while the investigator's comments came close to crossing the line, no specific sentence was, in fact,

recommended. State v. Draper, — Idaho —, 261 P.3d 853 (2011).

Psychological Evaluation.

Section 19-2522, not this rule, governs whether a psychological evaluation must be ordered. State v. Carter, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 12 (Feb. 8, 2012).

No manifest error occurred when the trial court failed to order, sua sponte, a psychological evaluation for use in sentencing a 67-year-old defendant for lewd conduct with a seven-year-old child. Even if defendant's dementia was a significant factor at sentencing, the district court already had a psychosexual evaluation and social/sexual assessment before it. State v. Clinton, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 49 (Aug. 20, 2012).

Rule 33. Sentence and judgment.

JUDICIAL DECISIONS

Analysis

Withdrawal.
—Generally.
Withdrawal of Plea.
—Denied.

Withdrawal.

—Generally.

To prevail on an ineffective assistance of counsel claim, the petitioner must show that his defense attorney's performance was deficient, and ordinarily the petitioner must also show that the defendant was prejudiced by the deficiency. To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. Zepeda v. State, — Idaho —, 274 P.3d 11, 2012 Ida. App. LEXIS 18 (2012).

While prejudice from ineffective assistance may be presumed when defense counsel fails to file a notice of appeal after the defendant so requests, that presumption does not apply to a defense attorney's failure to file a motion to withdraw a guilty plea. Zepeda v. State, — Idaho —, 274 P.3d 11, 2012 Ida. App. LEXIS 18 (2012).

Withdrawal of Plea.

—Denied.

Where defendant filed an "Amended Motion for Withdrawal of Plea of Guilty and Motion for Post-Conviction Relief" in his criminal case five months after the judgment of conviction was entered, the motion was time-barred by subsection (c) of this rule and could not be treated as a petition for postconviction relief. State v. Allen, — Idaho —, 283 P.3d 114, 2012 Ida. App. LEXIS 35 (May 15, 2012).

Rule 35. Correction or reduction of sentence.

JUDICIAL DECISIONS

Analysis

Abuse of Discretion.
Application.
New or Additional Information.

Abuse of Discretion.

Defendant's motion for reduction of sentence was properly denied where his enhanced sentence for burglary was due to his ten prior felony convictions, and the fact that he committed burglary while on parole. Further, the defendant did not offer any new or additional information demonstrating that the sentence was excessive as required under this rule. State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

Application.

Defendant's conviction was vacated on appeal and he sought reimbursement of the fines, fees, and restitution he had paid related to the conviction. These circumstances did not constitute the basis for correction of an illegal sentence under this rule. The sentence was legal when imposed, but upon vacation of the conviction there was no longer an order imposing the fines, fees and costs that could be corrected. State v. Peterson, — Idaho —, 280 P.3d 184, 2012 Ida. App. LEXIS 36 (May 21, 2012).

New or Additional Information.

Trial court did not abuse its discretion by denying defendant's motion for a sentence reduction, because he presented no new information pertaining to his sentence as to invoke this rule; his contention that he presented additional information in the form of an audiotape, where his accomplice allegedly takes

responsibility for a story written about the murder, was insufficient to find an abuse of discretion. State v. Adamcik, — Idaho —, 272 P.3d 417, 2012 Ida. LEXIS 32 (2012).

Rule 36. Clerical mistakes.

JUDICIAL DECISIONS

Amended Judgment of Conviction.

Order entering a second amended judgment of conviction expressing a unified sentence of six years, with one year fixed, for the offense of DUI, which the trial court said it issued to correct a clerical error in its first amended judgment of conviction, was proper because the trial court was not imposing an amended sentence, rather it was correcting an earlier error. State v. Moore, — Idaho —, 268 P.3d 471, 2011 Ida. App. LEXIS 106 (2011).

Rule 46. Bail or release on own recognizance.

JUDICIAL DECISIONS

Forfeiture of Bond.

Even if a bond surety had conclusively established that the defendant was deported, the impossibility doctrine would not have been a meritorious defense to forfeiture of the bond, as the defendant's deportation was due to his status as an illegal immigrant unlawfully present in the United States, a fact that the surety knew at the time the bond agreement was entered into. Thus, the act by the federal government in deporting the defendant was not an unforeseen supervening act that would excuse performance. State v. Two Jinn, Inc., — Idaho —, 264 P.3d 66 (2011).

Rule 52. Harmless error.

JUDICIAL DECISIONS

Error Held Not Harmless.

Trial court erred in denying defendant's motion for a presentence psychological evaluation during the sentencing phase of trial because the record demonstrated that defendant's mental condition was a significant factor in determining the sentence; the trial court's failure to order a psychological evaluation was not harmless error. State v. Hanson, — Idaho —, 271 P.3d 712, 2012 Ida. LEXIS 6 (2012).

MISDEMEANOR CRIMINAL RULES

Rule
13. Bail schedules.

Rule 13. Bail schedules.

(a) **Amount of bail.** The amount of bail for misdemeanor traffic offenses and other criminal offenses shall be as set forth herein. Such bail schedules shall not govern when a person charged appears before a judge or magistrate, or the defendant's case is reviewed by a judge or magistrate, in which case such bail schedules are advisory only and bail may be raised, lowered or eliminated at the magistrate's discretion based upon the circumstances of that particular case. Any judge may also designate a bond schedule for offenses not listed below.

(b) **Bail bond schedule.** Except as provided above, the bail bond required for specific alleged offenses pending arraignment or trial shall be as follows:

Idaho Code	Offense	Bail Bond
(1) MOTOR VEHICLE OFFENSES:		
49-218	Operating motor vehicle as emergency vehicle	$ 201.00
49-221	Failure to remove traffic sight obstruction	271.00
49-227	Driving without owner's consent	275.00
49-229	Injuring or destroying vehicle	275.00
49-230	Tampering with vehicle	271.00
49-235	Operating motor vehicle after notice of unsafe condition	275.00
49-1301(1)	Failure to remain at accident scene	300.00
49-1302	Failure to give information and aid at accident	300.00
49-1303	Failure to notify owner of unattended vehicle at accident	300.00
49-1304	Failure to give notice to owner of property adjacent to highways at accident	259.00
49-1305	Failure to give immediate notice of $1500 accident	300.00
49-1401(1)	Reckless driving	300.00
49-1401(3)	Inattentive driving	275.00
18-8004	Driving under the influence (First Offense)	

Idaho Code	Offense	Bail Bond
	Resident	500.00
	Nonresident	2,000.00
18-8004	Driving under the influence (Second Offense)	
	Resident	1,000.00
	Nonresident	3,000.00
18-8004C	Driving Under the Influence (Enhanced Penalty)	
	Resident	1,000.00
	Nonresident	3,000.00
49-1403	Knowingly permit operation of motor vehicle contrary to law	176.00
49-1404	Fleeing or attempting to elude police officer	300.00
49-1415	Illegal cancellation or soliciting cancellation of traffic citation	221.00
49-1419	Failure to obey traffic officer	176.00
49-1421	Driving on or across median of divided highway	166.00
49-1422	Passing stopped school bus	275.00
49-1424	Racing on public highways	271.00
18-3906	Littering highway from vehicle	186.00
(2) LICENSES, REGISTRATION AND INSURANCE OFFENSES:		
(A) License Offenses		
49-301	No license or invalid license	221.00
49-316	Failure to carry license (dismissed if license shown)	166.00
49-331(1)	Displaying mutilated or fictitious license	201.00
49-331(2)	Lending or permitting use of license by another	221.00
49-331(3)	Displaying a license of another as one's own	271.00
49-331(4)	Failure to surrender license when revoked or suspended	271.00
49-331(5)	Use of false or fictitious name in application for license, or concealing material facts	500.00
49-331(6)	Permitting any unlawful use of License	271.00
49-432	Operating a vehicle without a permit	

Idaho Code	Offense	Bail Bond
	Single Vehicle	275.00
	Combination of vehicles	377.00
49-432(2)(a)	Operating vehicle without 120 hour permit to increase gross weight	327.00
49-432(2)(b)	Operating vehicle without 30 day permit to increase gross weight	577.00
49-432(3)	Exceeding the number of temporary permits allowed in a calendar year	300.00
49-1627(2)	Unlawful use of dealer plates	271.00
18-8001	Driving without privileges (First offense)	
	Idaho resident	500.00
	Nonresident	2,000.00
18-8001	Driving without privileges (Second offense)	
	Idaho resident	1,000.00
	Nonresident	3,000.00
18-8001	Driving without privileges (Third offense)	
	Idaho resident	2,000.00
	Nonresident	4,000.00
(B) Registration and Title Offenses		
49-519(1)	Operating vehicle without certificate of title	271.00
49-519(2)	Operating vehicle for which certificate of title is canceled	271.00
(C) Insurance Offenses		
49-1210	Registration of vehicle without insurance certificate	271.00
49-1229	Failure of owner of vehicle to maintain liability insurance (Second or subsequent offense within 5 year period only)	275.00
49-1232	Failure to carry proof of liability insurance in vehicle (Second or subsequent offense within 5 year period only)	275.00

Idaho Code	Offense	Bail Bond
49-1428	Operating a motor vehicle without liability insurance (Second or subsequent offense within 5 year period only)	275.00
49-1429	False or altered insurance certificate	500.00
49-1430	Forged insurance certificate	500.00
(3) SIZE, WEIGHT AND D.L.E. OFFENSES:		
40-511(1)	Failure to stop at ports of entry or checking stations	271.00
49-1001(8)	Violation of travel authorization	271.00
49-1001, and 49-1002, and 49-1004, and 49-1005 and 49-438	Exceeding highway load limit plus pounds overweight (Effective July 1, 1995, Violations of 49-1001, 49-1002, 49-1004 and 49-1005 and 49-438 with an overweight between 1 and 4000 pounds is an infraction) Penalties are increased for multiple misdemeanor violations, see I.C. 49-1-13(4)	152.50

Pounds overweight:	Bail Bond
4,001 — 4,119	$ 27.00
4,120 — 4,219	41.00
4,220 — 4,319	54.00
4,320 — 4,419	67.00
4,420 — 4,519	81.00
4,520 — 4,619	94.00
4,620 — 4,719	108.00
4,720 — 4,819	121.00
4,820 — 4,919	134.00
4,920 — 5,019	148.00
5,020 — 5,119	161.00
5,120 — 5,219	175.00
5,220 — 5,319	188.00
5,320 — 5,419	202.00
5,420 — 5,519	215.00
5,520 — 5,619	228.00
5,620 — 5,719	242.00
5,720 — 5,819	255.00
5,820 — 5,919	269.00

Pounds overweight:	Bail Bond
5,920 — 6,019	282.00
6,020 — 6,119	295.00
6,120 — 6,219	309.00
6,220 — 6,319	322.00
6,320 — 6,419	336.00
6,420 — 6,519	349.00
6,520 — 6,619	362.00
6,620 — 6,719	376.00
6,720 — 6,819	389.00
6,820 — 6,919	403.00
6,920 — 7,019	416.00
7,020 — 7,119	429.00
7,120 — 7,219	443.00
7,220 — 7,319	456.00
7,320 — 7,419	470.00
7,420 — 7,519	483.00
7,520 — 7,619	497.00
7,620 — 7,719	510.00
7,720 — 7,819	523.00
7,820 — 7,919	537.00
7,920 — 8,019	550.00
8,020 — 8,119	564.00
8,120 — 8,219	577.00
8,220 — 8,319	590.00
8,320 — 8,419	604.00
8,420 — 8,519	617.00
8,520 — 8,619	631.00
8,620 — 8,719	644.00
8,720 — 8,819	657.00
8,820 — 8,919	671.00
8,920 — 9,019	684.00
9,020 — 9,119	698.00
9,120 — 9,219	711.00
9,220 — 9,319	725.00
9,320 — 9,419	738.00
9,420 — 9,519	751.00
9,520 — 9,619	765.00
9,620 — 9,719	778.00
9,720 — 9,819	792.00
9,820 — 9,919	805.00
9,920 — 10,019	818.00
10,020 — 10,119	832.00
10,120 — 10,219	845.00
10,220 — 10,319	859.00
10,320 — 10,419	872.00

Pounds overweight:	Bail Bond
10,420 — 10,519	885.00
10,520 — 10,619	899.00
10,620 — 10,719	912.00
10,720 — 10,819	926.00
10,820 — 10,919	939.00
10,920 — 11,019	952.00
11,020 — 11,119	966.00
11,120 — 11,219	979.00
11,220 — 11,319	993.00
11,320 — 11,419	1,006.00
11,420 — 11,519	1,020.00
11,520 — 11,619	1,033.00
11,620 — 11,719	1,046.00
11,720 — 11,819	1,060.00
11,820 — 11,919	1,073.00
11,920 — 12,019	1,087.00
12,020 — 12,119	1,100.00
12,120 — 12,219	1,113.00
12,220 — 12,319	1,127.00
12,320 — 12,419	1,140.00
12,420 — 12,519	1,154.00
12,520 — 12,619	1,167.00
12,620 — 12,719	1,180.00
12,720 — 12,819	1,194.00
12,820 — 12,919	1,207.00
12,920 — 13,019	1,221.00
13,020 — 13,119	1,234.00
13,120 — 13,219	1,247.00
13,220 — 13,319	1,261.00
13,320 — 13,419	1,274.00
13,420 — 13,519	1,288.00
13,520 — 13,619	1,301.00
13,620 — 13,719	1,315.00
13,720 — 13,819	1,328.00
13,820 — 13,919	1,341.00
13,920 — 14,019	1,355.00
14,020 — 14,119	1,368.00
14,120 — 14,219	1,382.00
14,220 — 14,319	1,395.00
14,320 — 14,419	1,408.00
14,420 — 14,519	1,422.00
14,520 — 14,619	1,435.00
14,620 — 14,719	1,449.00
14,720 — 14,819	1,462.00
14,820 — 14,919	1,475.00

Pounds overweight:	Bail Bond
14,920 — 15,019	1,489.00
15,020 — 15,119	1,504.00
15,120 — 15,219	1,524.00
15,220 — 15,319	1,544.00
15,320 — 15,419	1,564.00
15,420 — 15,519	1,584.00
15,520 — 15,619	1,604.00
15,620 — 15,719	1,624.00
15,720 — 15,819	1,644.00
15,820 — 15,919	1,664.00
15,920 — 16,019	1,684.00
16,020 — 16,119	1,704.00
16,120 — 16,219	1,724.00
16,220 — 16,319	1,744.00
16,320 — 16,419	1,764.00
16,420 — 16,519	1,784.00
16,520 — 16,619	1,804.00
16,620 — 16,719	1,824.00
16,720 — 16,819	1,844.00
16,820 — 16,919	1,864.00
16,920 — 17,019	1,884.00
17,020 — 17,119	1,904.00
17,120 — 17,219	1,924.00
17,220 — 17,319	1,944.00
17,320 — 17,419	1,964.00
17,420 — 17,519	1,984.00
17,520 — 17,619	2,004.00
17,620 — 17,719	2,024.00
17,720 — 17,819	2,044.00
17,820 — 17,919	2,064.00
17,920 — 18,019	2,084.00
18,020 — 18,119	2,104.00
18,120 — 18,219	2,124.00
18,220 — 18,319	2,144.00
18,320 — 18,419	2,164.00
18,420 — 18,519	2,184.00
18,520 — 18,619	2,204.00
18,620 — 18,719	2,224.00
18,720 — 18,819	2,244.00
18,820 — 18,919	2,264.00
18,920 — 19,019	2,284.00
19,020 — 19,119	2,304.00
19,120 — 19,219	2,324.00
19,220 — 19,319	2,344.00
19,320 — 19,419	2,364.00

Pounds overweight:	Bail Bond
19,420 — 19,519	2,384.00
19,520 — 19,619	2,404.00
19,620 — 19,719	2,424.00
19,720 — 19,819	2,444.00
19,820 — 19,919	2,464.00
19,920 — 20,019	2,484.00
20,020 — 20,119	2,506.00
20,120 — 20,219	2,536.00
20,220 — 20,319	2,566.00
20,320 — 20,419	2,596.00
20,420 — 20,519	2,626.00
20,520 — 20,619	2,656.00
20,620 — 20,719	2,686.00
20,720 — 20,819	2,716.00
20,820 — 20,919	2,746.00
20,920 — 21,019	2,776.00
21,020 — 21,119	2,806.00
21,120 — 21,219	2,836.00
21,220 — 21,319	2,866.00
21,320 — 21,419	2,896.00
21,420 — 21,519	2,926.00
21,520 — 21,619	2,956.00
21,620 — 21,719	2,986.00
21,720 — 21,819	3,016.00
21,820 — 21,919	3,046.00
21,920 — 22,019	3,076.00
22,020 — 22,119	3,106.00
22,120 — 22,219	3,136.00
22,220 — 22,319	3,166.00
22,320 — 22,419	3,196.00
22,420 — 22,519	3,226.00
22,520 — 22,619	3,256.00
22,620 — 22,719	3,286.00
22,720 — 22,819	3,316.00
22,820 — 22,919	3,346.00
22,920 — 23,019	3,376.00
23,020 — 23,119	3,406.00
23,120 — 23,219	3,436.00
23,220 — 23,319	3,466.00
23,320 — 23,419	3,496.00
23,420 — 23,519	3,526.00
23,520 — 23,619	3,556.00
23,620 — 23,719	3,586.00
23,720 — 23,819	3,616.00
23,820 — 23,919	3,646.00

Pounds overweight:	Bail Bond
23,920 — 24,019	3,676.00
24,020 — 24,119	3,706.00
24,120 — 24,219	3,736.00
24,220 — 24,319	3,766.00
24,320 — 24,419	3,796.00
24,420 — 24,519	3,826.00
24,520 — 24,619	3,856.00
24,620 — 24,719	3,886.00
24,720 — 24,819	3,916.00
24,820 — 24,919	3,946.00

Overweight amounts beyond those listed shall be calculated at $2,500 plus $.30 per pound for each pound over 20,000 pounds overweight rounded down to the nearest dollar.

Idaho Code	**Offense**	**Bail Bond**
49-1004	Failure to obtain overweight or oversize permit	221.00
49-1010(1)	Over width violation	271.00
49-1010(2)	Over height violation	271.00
49-1010(3)	Over length violation	271.00
49-1012	Moving farm equipment after dark without lights or flagman requirements	271.00
49-1427	Transporting explosives without required notices and equipment	416.00
49-2203	Failure to obtain endorsement for transporting hazardous material	216.00
67-2901A	Specific violations of Dept. of Law Enforcement rules:	
	Rule 18 — Any dangerous & hazardous material violation	416.00
	Rule 19 — Safety violations Serious or hazardous material safety violations as noted on the citation	416.00
	Rule 19 — Disqualified driver of commercial vehicle	416.00

Idaho Code	Offense	Bail Bond
	All other violations of Dept. of Law Enforcement rules:	196.00
63-2441	Special Fuel Permit Violation	377.00
(4) WATER AND WATERCRAFT OFFENSES:		
67-7016	Grossly negligent operation of watercraft	300.00
67-7017	Negligent operation of watercraft	271.00
67-7025	Interfering with other watercraft	211.00
67-7026	Operating watercraft in restricted area	271.00
67-7027	Failure to report collisions, accidents and casualties	300.00
67-7033(3)	Operating watercraft while suspended	
	Idaho resident	500.00
	Nonresident	2,000.00
67-7034	Operating watercraft under the influence	
	Idaho resident	500.00
	Nonresident	2,000.00

(5) FISH AND GAME OFFENSES: The amount of bail for any alleged fish or game offense shall be the sum of $186.00, except for certain specific violations which shall have bail in the following amounts:

(A) Big Game Violations

36-401	Hunting big game without a valid license	
	Idaho Resident	200.00
	Nonresident	500.00
36-405(c)(2)(B)	Transfer/Use of big game animal tag belonging to another person	
	Idaho resident	200.00
	Nonresident	500.00
36-409(c)	Hunt big game animal without appropriate tag, permit	

Idaho Code	Offense	Bail Bond
	Deer, bear, mountain lion, antelope	
	Idaho resident	200.00
	Nonresident	500.00
	Elk	
	Idaho resident	200.00
	Nonresident	500.00
	Moose, sheep, goat	
	Idaho resident	500.00
	Nonresident	1,500.00
36-409(d)	Failure to validate or attach own tag to big game animal:	
	Deer, antelope, bear and mountain lion	
	Idaho resident	200.00
	Nonresident	250.00
	Goat, elk, sheep, moose and caribou	
	Idaho resident	250.00
	Nonresident	500.00
36-502 and 36-1402(e) and 36-1404(a)	Possession of unlawfully taken big game (per animal)	
	Deer, antelope, bear and mountain lion	
	Idaho resident	400.00
	Nonresident	1,000.00
	Trophy animals (when flagrant violation applies)	2,000.00
	Elk	
	Idaho resident	800.00
	Nonresident	1,500.00
	Trophy animals (when flagrant violation applies)	5,000.00

Idaho Code	Offense	Bail Bond
	Goat, sheep, moose and caribou	
	Idaho resident	1,500.00
	Nonresident	2,000.00
	Trophy animals (when flagrant violation applies)	10,000.00
36-502	Possess or transport big game animal improperly tagged	
	Deer, antelope, black bear and mountain lion	200.00
	Goat, elk, sheep, moose and caribou	400.00
36-1101	Hunt big game animals during closed season (per animal)	
	Deer, antelope, black bear and mountain lion	
	Idaho resident	200.00
	Nonresident	500.00
	Elk	
	Idaho resident	300.00
	Nonresident	1,000.00
	Goat, sheep, moose and caribou	
	Idaho resident	500.00
	Nonresident	1,500.00
36-1101, 36-1402(e) and 36-1404(a)	Kill big game animals during closed season (per animal)	
	Deer, antelope, black bear and mountain lion	
	Idaho resident	400.00
	Nonresident	1,000.00
	Trophy animals (when flagrant violation applies)	2,000.00
	Elk	
	Idaho resident	800.00
	Nonresident	1,500.00

Idaho Code	Offense	Bail Bond
	Trophy animals (when flagrant violation applies)	5,000.00
	Goat, sheep, moose and caribou	
	Idaho resident	1,500.00
	Nonresident	2,000.00
	Trophy animals (when flagrant violation applies)	10,000.00
36-1101 and 36-1404(a)	Exceed big game bag limit (by one (1) animal (per animal)	
	Deer, antelope, bear and mountain lion	
	Idaho resident	400.00
	Nonresident	1,000.00
	Elk	
	Idaho resident	800.00
	Nonresident	1,500.00
	Goat, sheep, moose and caribou	
	Idaho resident	1,500.00
	Nonresident	2,000.00
36-1101, 36-1402(e) and 36-1404(a)	Exceed big game bag limit by two (2) or more animals-	
	Flagrant violation (per animal)	1,500.00
	Trophy Animals	
	Deer, antelope, bear, and mountain lion	2,000.00
	Elk	5,000.00
	Goat, sheep, moose, caribou	10,000.00
36-1101, 36-1402(e) and 36-1404(a)	Take big game animal with modern firearm during archery/muzzle loader-only hunt - Flagrant violation (per animal(s))	1,500.00

Idaho Code	Offense	Bail Bond
	Trophy Animals Deer, antelope	2,000.00
	Elk	5,000.00
	Goat, sheep, moose, caribou	10,000.00
36-1202	Waste of big game animal (per animal)	
	Idaho resident	500.00
	Nonresident	1,500.00
36-1202, 36-1402(e) and 36-1404(a)	Waste of big game animal	
	Flagrant Violations - Trophy Animals Deer, antelope	2,000.00
	Elk	5,000.00
	Goat, sheep, moose, caribou	10,000.00
36-1202	Waste of upland game animal	
	Idaho Resident	190.00
	Nonresident	250.00
(B) Upland and Migratory Game Bird Violations		
36-401	Hunting game birds without a valid license	
	Idaho resident	200.00
	Nonresident	300.00
36-502 and 36-1404(a)	Possess unlawfully taken game birds	
	Turkey, whistling swan and trumpeter swan	
	Idaho resident	200.00 + 25.00/bird
	Nonresident	250.00 + 25.00/bird
	All other species	165.00 + 25.00/bird
36-1101	Hunting game birds during closed season	

Idaho Code	Offense	Bail Bond
	Idaho resident	200.00
	Nonresident	500.00
36-1102(b)1 and 36-1902	Hunt, take or possess migratory birds contrary to Federal regulations	
	Eagles and swans	300.00/bird
	Hawks, owls and falcons	200.00/bird
	Geese and ducks	165.00 + 25.00/bird
36-1202	Waste of game bird	
	Idaho resident	165.00 + 25.00/bird
	Nonresident	250.00 + 25.00/bird
(C) Fishing Violations		
36-401	Fishing without a valid license	
	Salmon, steelhead and sturgeon	200.00
	All other species	186.00
36-502 and 36-1404	Possess unlawfully taken fish	
	Salmon, steelhead and bull trout	
	Idaho resident	200.00/fish
	Nonresident	300.00/fish
	Sturgeon	
	Idaho resident	500.00/fish
	Nonresident	1,000.00/fish
	All other species	165.00 + 25.00/fish
36-901 and 36-1202 and 36-1404(a)	Exceed bag or possession limit for fish and waste of game fish	
	Salmon, steelhead and bull trout	
	Idaho resident	200.00/fish
	Nonresident	300.00/fish
	Sturgeon	
	Idaho resident	500.00/fish

Idaho Code	Offense	Bail Bond
	Nonresident	1,000.00/fish
	All other species	165.00 + 25.00/fish
36-901	Fishing during closed season	
	Salmon, steelhead, sturgeon and bull trout	300.00
	All other species	200.00
36-902(a)	Allow or cause to pass into the waterway deleterious drugs, toxicants, chemicals, poisons, or electrical current to affect fish	500.00
36-902(c)	Use of explosives, poisons, nets, traps, spears or seines to take fish	500.00
(D) Miscellaneous Violations		
36-405(a)(3)(A)	Willfully make false statement on application for the purpose of obtaining wrong class license, tag or permit (per illegal document)	500.00
36-405(c)(1)	Purchase or possess wrong class license, tag or permit	500.00
36-501 and 36-1401(b)	Unlawful purchase or sale of wildlife/parts (per animal)	1,000.00
36-902(a)	Deposit destructive substances into waters	500.00
36-1101(b)(6)	Hunting with artificial light	500.00
36-1402(e)1 and 36-1404(a)	Take/kill big game animal with aid of artificial light (per animal)	
	Flagrant violation	1,500.00
	Trophy animals	
	Deer, antelope	2,000.00

Idaho Code	Offense	Bail Bond
	Elk	5,000.00
	Goat, sheep, moose, caribou	10,000.00
36-1402(d)(e)	Hunt, fish or trap or purchase a license while such privileges are revoked	
	Idaho resident	500.00
	Nonresident	1,000.00
36-1603	Hunting in violation of no trespass signs	200.00
18-3312	Injuring another by careless handling of and discharge of firearms	300.00
(6) OUTFITTER AND GUIDE OFFENSES:		
36-2104	Outfitting without a license	
	Idaho resident	200.00
	Nonresident	500.00
36-2104	Guiding without a license	
	Idaho resident	200.00
	Nonresident	500.00
36-2113(a)(8)	Willfully operating as an outfitter in any area or for any activity for which he is not licensed	
	Idaho resident	200.00
	Nonresident	500.00
36-2113(a)(9)	Employment of an unlicensed guide by an outfitter	
	Idaho resident	200.00
	Nonresident	500.00
(7) OTHER MISDEMEANOR OFFENSES:		
18-705	Resisting or obstructing an officer	300.00
18-6409	Disturbing the peace	221.00
18-6410	Assemble to disturb peace	221.00
23-615	Sale of liquor to underage person, etc.	275.00

Idaho Code	Offense	Bail Bond
23-603	Furnishing alcohol to a minor	275.00
25-221	Bringing in livestock without a health certificate	
	First animal in violation	239.00
	Each additional animal in violation	75.00
		(maximum of $500.00)
25-214A	Failing to stop at port of entry or checking station while transporting livestock.	
	First animal in violation	239.00
	Each additional animal in violation	75.00
		(maximum of $500.00)
18-3908	Flooding the highway	166.00
18-7906	Stalking	No bond until court appearance
18-918	Domestic assault or battery.	No bond until court appearance
39-6312	Violation of protection order in domestic violence	No bond until court appearance
18-920	Violation of a no contact order	No bond until court appearance
67-7114	Operating snowmobile or all-terrain vehicle while under the influence	
	Idaho Resident	500.00
	Nonresident	2,000.00

(c) **Method of posting bond.** The bail bond required above under subsection (b) of this rule, or any other bail bond set by a judge, may be posted, and a receipt given therefor indicating thereon the time and place for appearance by the defendant, in any of the following manners:

(1) **Cash bail bond.** By depositing an amount in cash equal to the bail bond.

(2) **Checks and money orders.** By depositing a cashier's check, money order, or a personal check payable to the clerk of the court under such procedures as shall be established by the administrative district judge or where acceptance of the personal check has been approved by a magistrate or district judge.

(3) **Surety bail bond.** By depositing, in lieu of cash, a bond or bond certificate which guarantees payment of the amount of the bail bond in the event the person charged fails to appear when required by the court. A fidelity, surety, guaranty, title or trust company authorized to do

business in the state of Idaho and authorized to become and be accepted as sole surety on undertakings and bonds may execute the written undertakings provided for in these rules, which may be accepted by the person receiving the bond without prior approval by a judge unless otherwise ordered by the administrative judge of the judicial district.

(4) **Property bail bond.** By depositing a property bail bond of property owners for the amount of bail, as provided by law. (This method may be used only if a magistrate approves and accepts the bond.)

(d) **Bail for violation of municipal or county ordinances.** Bail for the above described offenses defined by municipal or county ordinances which are similar to those described in this rule shall be in the same amounts as provided above. (Adopted April 18, 1983, effective July 1, 1983; amended July 9, 1984, effective September 1, 1984; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 18, 1987, effective July 1, 1987; amended March 30, 1988, effective July 1, 1988; amended April 12, 1988, effective July 1, 1988; amended March 27, 1989, effective July 1, 1989; amended March 23, 1990, effective July 1, 1990; amended March 20, 1991, effective July 1, 1991; amended April 15, 1991, effective July 1, 1991; amended September 16, 1991, effective January 1. 1992; amended March 26, 1992, effective July 1, 1992; amended February 10, 1993, effective July 1, 1993; amended April 21, 1993, effective July 1, 1993; amended March 30, 1994, effective July 1, 1994; amended April 19, 1995, effective July 1, 1995; amended April 3, 1996, effective July 1, 1996; amended February 26, 1997, effective July 1, 1997; amended April 1, 1997, effective July 1, 1997; amended March 18, 1998, effective July 1, 1998; amended March 9, 1999, effective July 1, 1999; amended December 30, 1998, effective January 1, 1999; amended June 7, 1999, effective July 1, 1999; amended June 7, 2000, effective July 1, 2000; amended April 13, 2001, effective July 1, 2001; amended March 5, 2002, effective July 1, 2002; amended April 22, 2004, effective July 1, 2004; amended July 19, 2005, effective September 1, 2005; amended April 26, 2007, effective July 1, 2007; amended December 1, 2008, effective February 1, 2009; amended September 4, 2009, effective October 1, 2009; amended April 2, 2010, effective April 15, 2010; amended March 18, 2011, effective July 1, 2011; amended April 27, 2012, effective July 1, 2012; amended June 19, 2012, effective July 1, 2012; amended and effective August 6, 2012.)

ORDER FOR PILOT PROJECT

In the Supreme Court of the State of Idaho

IN RE: PILOT PROJECT FOR IMPLEMENTATION OF RULES OF FAMILY LAW PROCEDURE IN FOURTH JUDICIAL DISTRICT	))))	ORDER FOR PILOT PROJECT

The Court having determined that it is desirable to authorize a pilot project for the FOURTH Judicial District to test the implementation of a new set of Rules of Family Law Procedure as recommended by the Children and Families in the Courts Committee:

NOW, THEREFORE, IT IS ORDERED that the Rules of Family Law Procedure as published on the Idaho Supreme Court website shall apply to all family law cases in the Magistrate's Division of the Fourth Judicial District, including divorce, child support, child custody, paternity, proceedings related to the Domestic Violence Crime Prevention Act, and all proceedings, judgments or decrees related to the modification or enforcement of such orders, except contempt. These pilot project rules shall not apply to cases involving the Child Protection Act, Adoption, or Termination and Guardianship. These rules shall apply to all cases filed on or after January 1, 2013, and shall continue until further order of the court. The Rules of Family Law Procedure shall be reviewed at the end of one year.

DATED this 20th day of November, 2012.

By Order of the Supreme Court
Roger S. Burdick
Chief Justice

Compiler's Notes. To view the proposed Rules of Family Law Procedure, please visit http://www.isc.idaho.gov/irflp_home.

IDAHO COURT ADMINISTRATIVE RULES

RULES GOVERNING THE ADMINISTRATION AND SUPERVISION OF THE UNIFIED AND INTEGRATED IDAHO JUDICIAL SYSTEM.

PART IV. COURT RECORDS REQUIRED; PRESERVATION, DESTRUCTION, OR DISPOSITION OF COURT RECORDS.

Rule 32. Records of the judicial department — Examination and copying — Exemption from and limitations on disclosure.

JUDICIAL DECISIONS

ANALYSIS

Burden of Proof.
Record Not Exempt from Disclosure.

Burden of Proof.
The text of the rule does not place a burden on the state to demonstrate the public interest in disclosure after the defendant showed that he had sustained economic harm because his records were not sealed. State v. Gurney, — Idaho —, 272 P.3d 474, 2012 Ida. LEXIS 50 (2012).

Record Not Exempt from Disclosure.
District court did not err in denying defendant's motion to seal his criminal case on the ground of economic hardship, where the court properly determined that the public interest in disclosure predominated over defendant's privacy interests, even though defendant presented evidence of economic harm suffered as he sought employment and housing. State v. Gurney, — Idaho —, 272 P.3d 474, 2012 Ida. LEXIS 50 (2012).

Cited in: State v. Marsh, — Idaho —, 283 P.3d 107, 2011 Ida. App. LEXIS 107 (Dec. 22, 2011).

Rule 40. Appellate court records.

JUDICIAL DECISIONS

Prevailing Party.
Even though a judgment had been certified as final pursuant to I.R.C.P. Rule 54(b), because the certified judgment did not dispose of all of the parties' claims, an appellate court could not determine the prevailing party and could not award attorney fees. Asbury Park, LLC v. Greenbriar Estate Homeowner's Ass'n, — Idaho —, 271 P.3d 1194, 2012 Ida. LEXIS 20 (2012).

PART V. OTHER COURT STANDARDS AND PROCEDURES.

Rule 41. Court facilities.

JUDICIAL DECISIONS

Prevailing Party.
Even though a judgment had been certified as final pursuant to I.R.C.P. Rule 54(b), because the certified judgment did not dispose of all of the parties' claims, an appellate court could not determine the prevailing party and could not award attorney fees. Asbury Park, LLC v. Greenbriar Estate Homeowner's Ass'n, — Idaho —, 271 P.3d 1194, 2012 Ida. LEXIS 20 (2012).

IDAHO RULES OF PROFESSIONAL CONDUCT
CLIENT LAWYER RELATIONSHIP

Rule 1.16: Declining or terminating representation.

JUDICIAL DECISIONS

Commingling.

In a bankruptcy case, the proposal of debtor's counsel to deposit the debtors' funds in his general account, and his intention to have free access to those monies was inappropriate under Idaho R. Prof. Conduct 1.15(b) and subsection (d) of this rule. In re Werry, — Bankr. —, 2011 Bankr. LEXIS 3292 (Aug. 26, 2011).

ADVOCATE

Rule 3.3: Candor toward the tribunal.

JUDICIAL DECISIONS

Ex Parte Hearing.

In a hearing on a motion for a default judgment, the attorney for the movant has a duty under subsection (d) of this rule to inform the judge of any information that the attorney may have that relates to a meritoious defense to the motion. Maynard v. Nguyen, — Idaho —, 274 P.3d 589, 2011 Ida. LEXIS 130 (Sept. 7, 2011).

IDAHO APPELLATE RULES

Rule
5. Special writs and original proceedings.
6. Title of appeal and designation of parties and size of paper.
9. Appearance of attorneys not licensed in Idaho.
11. Appealable judgments and orders.
11.2. Signing of notice of appeals, petitions, motions, briefs and other papers; sanctions.
12. Appeal by permission.
12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1.
13. Stay of proceedings upon appeal or certification.
17. Notice of appeal — Contents.
21. Effect of failure to comply with time limits.
23. Filing fees and clerk's certificate of appeal — Waiver of appellate filing fee.
25. Reporter's transcript — Contents.
31. Exhibits, recordings and documents.
42. Petition for rehearing.
46. Extension of time generally.
118. Petition for review by the Supreme Court.

Rule 4. Persons who may appeal.

JUDICIAL DECISIONS

Party to Action.

While there was no doubt that an attorney was aggrieved by a trial court's refusal to recognize the attorney's claimed lien, the impediment to the attorney's appeal was the attorney's lack of party status. Kinghorn v. Clay, — Idaho —, 283 P.3d 779, 2012 Ida. LEXIS 187 (Aug. 9, 2012).

Rule 5. Special writs and original proceedings.

(a) **Special writs.** Any person may apply to the Supreme Court for the issuance of any extraordinary writ or other proceeding over which the Supreme Court has original jurisdiction. Except for petitions for writs filed by incarcerated persons and petitions for writs of habeas corpus, petitions for writs and motions seeking to intervene in such petitions shall contemporaneously be served by mail on all affected parties, including the real party in interest. There shall be no response to applications filed pursuant to this rule unless the Supreme Court requests a party to respond to the application before granting or denying the same. The Supreme Court shall process petitions for such special writs as are established by law in the manner provided in this rule..

(b) **Challenge to a final redistricting plan.** In accord with Article III, Section 2(5) of the Idaho Constitution, any registered voter, any incorporated city or any county in this state, may file an original action challenging a congressional or legislative redistricting plan adopted by the Commission on Reapportionment. Such challenges shall be filed within 35 days of the filing of the final report with the office of the Secretary of State by the Commission.

(c) **Filing Fee — Briefs — Number.** Special writs shall issue only upon petitions verified by the party beneficially interested therein and upon briefs in support thereof filed with the Clerk of the Supreme Court with payment of the appropriate filing fee. No filing fee shall be required with a petition for writ of habeas corpus which is filed in connection with a criminal case or

post-conviction relief 1 proceeding. Petitioner shall file an original and six copies of the petition and brief with the Clerk of the Supreme Court.

(d) **Procedure for Issuance of Writs.** Special writs, except writs of habeas corpus, shall issue as herein provided. The Supreme Court acting through three (3) or more members, or by two (2) or more members when the Court is in recess, may issue a writ directing the respondent to act in accordance with the writ, or to appear or respond at the time fixed in the writ to show cause why the relief requested in the petition should not be granted. The court may enter an order providing for briefing and oral argument prior to issuance of a writ or an order to show cause. If such an order is entered, briefing shall be conducted in the manner outlined in the order as supplemented by these rules. The briefs shall be in the form prescribed by Rule 32(e). A majority of the entire Court, may also direct the respondent to so act, or to refrain from acting, as directed in the writ, pending hearing and upon such conditions as the Court may impose. Upon its issuance, a copy of the petition, brief and writ shall immediately be served upon all affected parties including the real party in interest as concerns the requested relief, which real party must be named in the petition and the writ. Service shall be made in the manner and within the time limit set by the Court. Appearance in response to the writ by any interested party shall be by verified answer and by brief. If no appearance is made, the Court may grant any requested relief justified by the petition. If appearance is made, the Court may schedule the matter for oral argument or decide the matter on the record. Issues of fact, if any, shall be determined in the manner ordered by the Court.

(e) **Petitions for Writ of Habeas Corpus.** Petitions for writs of habeas corpus shall be processed as provided by law. (Adopted March 25, 1977, effective July 1, 1977; Amended March 19, 2009, effective July 1, 2009; amended November 20, 2012, effective January 1, 2013.)

Rule 6. Title of appeal and designation of parties and size of paper.

The original title of an action or proceeding, with the names of the parties in the same order, shall be retained on appeal by adding the designations of "appellant" and "respondent." In special proceedings the party prosecuting shall be designated the "petitioner" and the adverse party, if any, the "respondent." In an appeal in which there is no adverse party named in the title, there shall be added the name of the party prosecuting the appeal designated as "appellant." In an appeal from a decision or order of the Idaho Public Utilities commission filed by an intervenor in the original proceedings, the petitioner or applicant in the original proceedings shall be made a party to the appeal, and designated as a "respondent". The district court or administrative agency may by order correct the title of an appeal or cross-appeal at any time before the clerk's or agency's record is lodged as provided in Rule 29. The Supreme Court may amend a title of an appeal or proceeding before it at any time. All motions, petitions and other documents filed with the court should be typed on 8 ½ x 11 inch paper. Prisoners

incarcerated or detained in a state prison or county jail may file documents that are legibly hand-printed in black ink, in whole or in part, that otherwise conform to the requirements of these rules. Once a Supreme Court case number is assigned, all motions, briefs and other documents filed shall specify both the Supreme Court case number and the district court docket number, including county, or agency docket number from which the case originated. The original case number should appear below the Supreme Court case number. (Adopted March 25, 1977, effective July 1, 1977; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended January 30, 2001, effective July 1, 2001; amended November 20, 2012, effective January 1, 2013.)

Rule 7.1. Intervention.

Cited in: Kinghorn v. Clay, — Idaho —, 283 P.3d 779, 2012 Ida. LEXIS 187 (Aug. 9, 2012).

Rule 9. Appearance of attorneys not licensed in Idaho.

Upon written motion of a licensed Idaho attorney, at least 14 days before a hearing or argument, and upon order of the Supreme Court an attorney not licensed in Idaho may be permitted to appear and argue before the Supreme Court in association with such Idaho licensed attorney. The motion, or a supporting statement, shall certify that the attorney not licensed in Idaho is a licensed attorney in good standing in another specific state or jurisdiction. If an attorney is granted pro hac vice admission pursuant to Idaho Bar Commission Rule to appear in any case, then the attorney may continue to appear in that case before the Supreme Court without obtaining an order pursuant to this rule. (Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended November 20, 2012, effective January 1, 2013.)

Rule 11. Appealable judgments and orders.

An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders:

(a) **Civil Actions.** From the following judgments and orders of a district court in a civil action:

(1) Final judgments, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure including judgments of the district court granting or denying peremptory writs of mandate and prohibition.

(2) Decisions by the district court dismissing, affirming, reversing or remanding an appeal.

(3) Judgments made pursuant to a partial judgment certified by the trial court to be final as provided by Rule 54(b), I.R.C.P.

(4) Any contempt order or judgment certified by the trial court to be final as provided by Rule 54(b), I.R.C.P.

(5) An order granting or refusing a new trial, including such orders which contain a conditional grant or denial of a new trial subject to additur and remittitur.

(6) An order granting or denying a motion for judgment notwithstanding the verdict.

(7) Any order made after final judgment including an order denying a motion to set aside a default judgment, but excluding an order granting a motion to set aside a default judgment.

(8) Any order appealable under the Uniform Arbitration Act, Title Seven, Chapter 9 of the Idaho Code.

(9) A district court order designating a person a vexatious litigant pursuant to Idaho Court Administrative Rule 59, in which case the notice of appeal may be filed with either the district court clerk or the Clerk of the Supreme Court.

(b) **Probate Proceedings.** From any interlocutory or final judgment or order made after final judgment of a district court in a probate proceeding, whether original or appellate, which is or would be appealable from the magistrates division to the district court by statute or these rules.

(c) **Criminal Proceedings.** From the following judgments and orders of the district court in a criminal action, whether or not the trial court retains jurisdiction:

(1) Final judgments of conviction.

(2) An order granting or denying a withheld judgment on a verdict or plea of guilty.

(3) An order granting a motion to dismiss an information or complaint.

(4) Any order or judgment, whenever entered and however denominated, terminating a criminal action, provided that this provision shall not authorize a new trial in any case where the constitutional guarantee against double jeopardy would otherwise prevent a second trial.

(5) Any order, however denominated, reducing a charge of criminal conduct over the objection of the prosecutor.

(6) Any judgment imposing sentence after conviction, except a sentence imposing the death penalty which shall not be appealable until the death warrant is issued as provided by statute.

(7) An order granting a motion to suppress evidence.

(8) An order granting or denying a motion for new trial.

(9) Any order made after judgment affecting the substantial rights of the defendant or the state.

(10) Decisions by the district court on criminal appeals from a magistrate, either dismissing the appeal or affirming, reversing or remanding.

(d) **Administrative Proceedings — Industrial Commission.** From any final decision or order of the Industrial Commission or from any final decision or order upon rehearing or reconsideration by the administrative agency.

(e) **Administrative Proceedings — Public Utilities Commission.** From any decision or order of the Public Utilities Commission which is appealable to the Supreme Court by statute.

(f) **Administrative Proceedings — Judicial Review of Agency Decisions.** From any final decision or order of the district court on judicial review of an agency decision.

(g) **Cross-appeals and additional issues on appeal.** After an appeal has been filed from a judgment or order specified above in this rule, a timely cross-appeal may be filed from any interlocutory or final judgment order or decree. If no affirmative relief is sought by way of reversal, vacation or modification of the judgment, order or decree, an issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal. (Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 20, 1991, effective July 1, 1991; amended March 9, 1999, effective July 1, 1999; amended January 30, 2001, effective July 1, 2001; amended March 21, 2007, effective July 1, 2007; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

JUDICIAL DECISIONS

Jurisdiction of Court.

Supreme court had jurisdiction over the appeal of the trial court's granting of defendant's motion to suppress, even though the defendant never filed such a motion; both parties proceeded as if a motion had been filed, both briefed the nonexistent motion, and the trial court granted the motion. State v. Koivu, — Idaho —, 272 P.3d 483, 2012 Ida. LEXIS 54 (2012).

Rule 11.2. Signing of notice of appeals, petitions, motions, briefs and other papers; sanctions.

(a) Every notice of appeal, petition, motion, brief and other document of a party represented by an attorney shall be signed by at least one (1) licensed attorney of record of the state of Idaho, in the attorney's individual name, whose address shall be stated before the same may be filed. A party who is not represented by an attorney shall sign the notice of appeal, petition, motion, brief or other document and state the party's address. The signature of an attorney or party constitutes a certificate that the attorney or party has read the notice of appeal, petition, motion, brief or other document; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the notice of appeal, petition, motion, brief, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the notice of appeal, petition, motion, brief or other document including a reasonable attorney's fee.

(b) The court may declare a party a vexatious litigant pursuant to Idaho Court Administrative Rule 59. (Adopted June 15, 1987, effective November 1, 1987; redesignated from I.A.R. 11.1, March 19, 2009, effective July 1, 2009; amended November 20, 2012, effective January 1, 2013.)

JUDICIAL DECISIONS

Award Denied.

Idaho industrial special indemnity account was not entitled to appellate attorney fees under the rule, because an employer's appeal of a determination that it was liable for an employee's permanent total disability benefits was not brought for an improper purpose. Tarbet v. J.R. Simplot Co., 151 Idaho 755, 264 P.3d 394 (2011).

Rule 12. Appeal by permission.

(a) **Criteria for permission to appeal.** Permission may be granted by the Supreme Court to appeal from an interlocutory order or judgment of a district court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) **Motion to District Court or Administrative Agency — Order.** A motion for permission to appeal from an interlocutory order or judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the district court or administrative agency within fourteen (14) days from date of entry of the order or judgment. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county. The court or agency shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for approving or disapproving the motion.

(c) **Motion to Supreme Court for Permission to Appeal.**

(1) **Motion of a party.** Within fourteen (14) days from entry by the district court or administrative agency of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the interlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the district court or administrative agency approving or disapproving the permission to appeal. If the district court or administrative agency fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the Supreme Court for permission to appeal without any order of the district court or administrative agency.

(2) **Motion by order of court or agency.** A district court or administrative agency may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or judgment. The court or agency shall file a certified copy of its order with the Supreme Court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal from the interlocutory order or judgment under this rule.

(3) **Procedure.** A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county and the attorney general of the state of Idaho.

(d) **Acceptance by Supreme Court.** Any appeal by permission of an interlocutory order or judgment under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such interlocutory order or judgment as appealable and granting leave to a party to file a notice of appeal within a time certain. Unless otherwise ordered by the Supreme Court in its order of acceptance, such appeal shall thereafter proceed in the same manner as an appeal as a matter of right, except that it shall be retained by the Supreme Court. The clerk of the Supreme Court shall file with the district court or administrative agency a copy of the order of the Supreme Court granting or denying acceptance, and shall mail copies to all parties to the action or proceeding. (Adopted March 24, 1982, effective July 1, 1982; amended April 18, 1983, effective July 1, 1983; amended March 23, 1990, effective July 1, 1990; amended January 28, 1997, effective July 1, 1997; amended March 18, 1998, effective July 1, 1998; amended March 22, 2002, effective July 1, 2002; amended March 24, 2005, effective July 1, 2005; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1.

This rule governs procedures for an expedited review of an appeal brought as a matter of right pursuant to Rule 11.1 or a permissive appeal granted pursuant to Rule 12.1.

(a) **Notice of appeal.**

(1) An appeal from any final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights or granting or denying a petition for adoption shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of issuance of the judgment. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(2) An appeal filed pursuant to order of the Supreme Court granting a motion for permissive appeals pursuant to Rule 12.1 shall be made only by physically filing a notice of appeal with the clerk of the district court

within fourteen (14) days from the date of issuance of the order granting the appeal. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

(b) **Preparation and filing of clerk's record.** The official court file, including any minute entries or orders together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal. The record shall be prepared in accord with Rule 27 (a) and (b) as to number, use and fee, and Rule 28 (d) (e) and (f) and (g) as to preparation. The clerk shall prepare the record and have it ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal. Clerks shall give priority to preparation of the record in these cases. The payment of the clerk's record fee as required by this rule may be waived by the magistrate court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court.

(c) **Preparation and filing of transcript.** Upon the filing of the notice of appeal the clerk of the district court shall forward the notice to the Trial Court Administrator, who shall be responsible for assigning preparation of the transcript. Unless otherwise ordered by the magistrate court, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within the time set by the Trial Court Administrator and transcriptionist. The payment of the transcript fee may be waived by the magistrate court pursuant to section 31-3220, Idaho Code, in accordance with the local rules of the judicial district of the district court. The transcript shall be prepared in accord with Rule 24 (a) and (b) as to number, use and format, and in accord with Rules 25 and 26. The transcript shall be prepared and ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal.

(d) **Briefing.** The time prescribed in Rule 34 for filing of briefs shall be reduced such that the appellant's brief is due within twenty-one (21) days of the date that the clerk's record and transcript are filed with the Supreme Court. The respondent's and cross-appellant's brief, if any, shall be joined in one brief, and shall be filed within twenty-one (21) days after service of the appellant's brief. The reply brief and cross-respondent's brief, if any, shall be combined and shall be filed within fourteen (14) days of service of any respondent's brief. If there is no cross-respondent's brief then the reply brief shall be filed within seven (7) days after service of the respondent's brief.

(e) **Extensions.** Each case subject to this rule shall be given the highest priority at all stages of the appellate process, and the clerk, transcriptionist or court reporter, and litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

(f) **Oral argument.** Oral argument, if requested, shall be held within one hundred twenty (120) days from the filing of the notice of appeal.

(g) **Petitions for rehearing and review.** Any petition for rehearing or review shall be accompanied by the brief in support of the petition or the

petition shall be summarily dismissed. (Adopted March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Rule 12.3. Certification of a question of law from a United States court.

RESEARCH REFERENCES

A.L.R. Construction and application of Uniform Certification of Questions of Law Act. 69 A.L.R.6th 415.

Rule 13. Stay of proceedings upon appeal or certification.

(a) **Temporary Stay in Civil Actions Upon Filing a Notice of Appeal or Notice of Cross-Appeal.** Unless otherwise ordered by the district court, upon the filing of a notice of appeal or notice of cross-appeal all proceedings and execution of all judgments or orders in a civil action in the district court, shall be automatically stayed for a period of fourteen (14) days. Any further stay shall be only by order of the district court or the Supreme Court. Any stay of orders or proceedings in the Industrial Commission or the Public Utilities Commission shall be as provided in Rule 13(d) and (e).

(b) **Stay Upon Appeal — Powers of District Court — Civil Actions.** In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on an appeal;

(1) Settle the transcript on appeal.

(2) Rule upon any motion for new trial.

(3) Rule on any motion to amend findings of fact or conclusions of law.

(4) Rule on any motion to amend the judgment.

(5) Rule upon any motion for judgment notwithstanding the verdict.

(6) Rule on any motion under Rule 60(a) or (b), I.R.C.P.

(7) Rule upon any motion for reconsideration filed pursuant to Rule 11(a)(2)(B), I.R.C.P.

(8) Enter a stay of execution or enforcement of any injunction or mandatory order entered by the court upon such conditions and upon the posting of such security as the court determines in its discretion.

(9) Make any order regarding the taxing of costs or determination of attorneys fees incurred in the trial of the action.

(10) Make any order regarding the use, preservation or possession of any property which is the subject of the action on appeal.

(11) Take any action or enter any order deemed advisable in the discretion of the court with regard to the custody or support of children pending any appeal involving the custody or support of such children, and to amend or modify such order from time to time, during the pendency of the appeal, by reason of changes of circumstances of the parties.

(12) Make any order which the district court deems appropriate in its discretion for the payment or advancement of attorneys fees and/or

anticipated costs on appeal by one party to the other, subject to the order of the Supreme Court determining the right to, and amount of, attorneys fees on appeal.

(13) Take any action or enter any order required for the enforcement of any judgment or order.

(14) Stay execution or enforcement of any judgment, order or decree appealed from, other than a money judgment, upon the posting of such security and upon such conditions as the district court shall determine.

(15) Stay execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond by a fidelity, surety, guaranty, title or trust company authorized to do business in the state and to be a surety on undertakings and bonds, either of which must be in the amount of the judgment or order, plus 36% of such amount. Provided, an agreement not to execute on the judgment made pursuant to Rule 16(b) may be filed in lieu of such bond or cash deposit. Any bond filed pursuant to this rule shall state that the company issuing or executing the same agrees to pay on behalf of the appellant all sums found to be due and owing by the appellant by reason of the outcome of the appeal, within 30 days of the filing of the remittitur from the Supreme Court, up to the full amount of the bond or undertaking. A copy of the bond, agreement not to execute, or notification of a cash deposit shall be served upon all parties to the appeal at the time of the application for the stay of execution. Any objection to the sufficiency of a cash deposit or bond posted under this rule shall be waived unless a written objection is made in the form of a motion and filed with the district court within 21 days of the filing of such bond or cash deposit. The district court shall rule upon such objection in the same manner as any other motion under the I.R.C.P. If the district court stays execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond, the court may, upon motion or application, cause or direct any judgment lien filed to be released. If the appellate court has vacated any money judgment and remanded only for a determination of the amount of the judgment, the district court may continue or modify the amount of any cash deposit or supersedeas bond posted in connection with the appeal. Any cash deposit may be applied to the judgment upon filing of the remittitur from the Supreme Court. If a party obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal. In addition, the supersedeas bond or cash deposit requirements may be waived in any action for good cause shown. However, if the judgment creditor proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(16) Any order of the Supreme Court as to whether or not a judgment, order, decree or proceeding shall be stayed shall take precedence over any order entered by the district court.

(17) Rule on any motion or application for the issuance of a Rule 54(b) I.R.C.P. certificate making a partial judgment final and appealable.

(18) Take any action and rule upon all matters, including conduct of a trial, during a permissive appeal under Rule 12 I.A.R. or during an appeal from a partial judgment certified as final under Rule 54(b) I.R.C.P., if approved by the Supreme Court under Rule 13.4.

(19) Rule upon any application for court appointed counsel in a civil case, including a petition for habeas corpus or a petition for post-conviction relief.

(20) Rule upon any motion pertaining to the taking of depositions pursuant to Rule 27(b), I.R.C.P.

(c) **Stay Upon Appeal — Powers of District Court — Criminal Action.** In criminal actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency of an appeal:

(1) Settle the transcript on appeal.

(2) Rule upon any motion for a new trial.

(3) Rule upon any motion for arrest of judgment.

(4) Conduct any hearing, and make any order, decision or judgment allowed or permitted by § 19-2601, Idaho Code.

(5) Conduct any hearing and make any order, decision or judgment with regard to an originally withheld judgment upon a plea or verdict of guilty.

(6) Place a defendant upon probation, modify or revoke such probation, or sentence a defendant upon revocation of probation.

(7) Determine and order whether there shall be a stay of execution of a judgment of conviction upon an appeal to the Supreme Court, except where the sentence is capital punishment, in which case execution of the sentence shall be automatically stayed pending appeal.

(8) Determine whether the defendant should be allowed bail, and if the defendant is allowed bail:

(i) Determine the amount of bail;

(ii) Modify the amount of bail from time to time;

(iii) Forfeit bail for violation of any of its conditions;

(iv) Issue a warrant for the arrest of the defendant for violation of bail.

(9) Determine whether the defendant is entitled to a transcript and court appointed attorney on appeal at public expense, and if so, appoint an attorney for the defendant and upon the filing of a notice of appeal, order the preparation of the transcript and record at county expense.

(10) Enter any other order after judgment affecting the substantial rights of the defendant as authorized by law.

(11) Rule upon a motion to correct or reduce a sentence under Rule 35 I.C.R.

(12) Sentence a defendant for a crime for which the defendant had been found guilty and which has been appealed.

(d) **Stay Upon Appeal From the Industrial Commission.** In administrative appeals from the Industrial Commission the order or award shall be stayed as provided by statute during the pendency of the appeal, unless otherwise ordered by the Industrial Commission or the Supreme Court.

(e) **Stay Upon Appeal From the Public Utilities Commission.** In administrative appeals from the Public Utilities Commission, unless stayed by the Supreme Court, the administrative agency shall have continued jurisdiction of the matter and the parties consistent with the provisions of applicable statutes including the power to settle the transcript and record on appeal.

(f) **Stay Upon Permissive Appeal.**

(1) **Stay during processing of motion for permission to appeal.** The filing of a motion for permission to appeal under Rule 12 shall not automatically stay the action or proceeding nor the enforcement of the interlocutory judgment, order or decree. After a motion for permission to appeal has been filed, the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

(2) **Stay after a motion for permission to appeal has been granted.** The granting of a motion for permission to appeal under Rule 12 by the Supreme Court automatically stays the entire action or proceeding until the appeal has terminated, and during that time the district court or administrative agency shall have no power or authority over the action or proceeding, except as provided in subsections (a), (b), (c), (d) and (e) of this Rule. Provided, the granting of the motion for permission to appeal does not stay the enforcement of any judgment, order or decree, but the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

(g) **Stay by Supreme Court.** The Supreme Court may also, in its discretion, enter an order staying a proposed act, a pending action or proceeding, or the enforcement of any judgment, order or decree, including but not limited to an injunction, writ of mandamus or prohibition, at any time during the pendency of an original application or petition for any extraordinary writ, or during the pendency of any appeal or a motion for certification of appeal. Any order of the Supreme Court shall take precedence over any order entered by the district court or administrative agency. Provided, in any appeal from the district court or an administrative agency, a party desiring to obtain any such stay must first make application to the district court or administrative agency before making application to the Supreme Court. If a district court or administrative agency denies an application for stay, or fails to act upon the application within fourteen (14) days after the filing of the application, any party may apply to the Supreme Court for a stay. If a district court or administrative agency grants a stay,

any party may apply to the Supreme Court to modify or vacate the stay. (Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979; amended March 24, 1982, effective July 1, 1982; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 23, 1990, effective July 1, 1990; amended February 10, 1993, effective July 1, 1993; amended March 18, 1998, effective July 1, 1998; amended March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Rule 17. Notice of appeal — Contents.

A notice of appeal shall contain substantially the following information:

(a) **Title.** The title of the action or proceeding.

(b) **Court or Agency Title.** The title of the court or agency which heard the trial or proceeding and the name and title of the presiding judge or official.

(c) **Case Number.** The number assigned to the action or proceeding by the trial court or administrative agency.

(d) **Parties.** The name of the appealing party and the party's attorney and the name of the adverse party and that party's attorney. An address, phone number and email address must also be given, except no email address is required for persons appearing pro se.

(e) **Designation of Appeal.**

(1) **A Designation of the Judgment or Order Appealed From.** The notice of appeal shall designate the judgment or order appealed from which shall be deemed to include, and present on appeal:

(A) All interlocutory judgments and orders entered prior to the judgment, order or decree appealed from, and

(B) All final judgments and orders entered prior to the judgment or order appealed from for which the time for appeal has not expired, and

(C) All interlocutory or final judgments and orders entered after the judgment or order appealed from except orders relinquishing jurisdiction after a period of retained jurisdiction or orders granting probation following a period of retained jurisdiction.

(2) **Premature Filing of Notice of Appeal.** A notice of appeal filed from an appealable judgment or order before formal written entry of such document shall become valid upon the filing and the placing the stamp of the clerk of the court on such appealable judgment or order, without refiling the notice of appeal.

(f) **Issues.** A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

(g) **Jurisdictional Statement.** A statement as to the basis for the right to appeal to the Idaho Supreme Court from the judgments or orders described in paragraph 1 of the notice of appeal.

(h) **Transcript.** A designation as to whether a transcript is requested, and if requested, whether a standard transcript, a supplemented transcript, or a partial transcript as defined in Rule 25 is requested by the appellant. The notice shall also state whether the appellant's copy of the transcript shall be provided in hard copy or electronic format or both. If no election is made within 21 days of filing the notice of appeal, the appellant will receive a hard copy of the transcript. If a supplemented transcript is requested, the request shall specifically identify each of the items of additional record requested which would otherwise be excluded under Rule 25(c).

(i) **Record.** A designation of documents, if any, to be included in the clerk's or agency's record in addition to those automatically included pursuant to the following Rule 28.

(j) **Exhibits - Civil cases.** A designation of documents, charts, or pictures offered or admitted as exhibits in a trial or hearing to be copied and sent to the Supreme Court.

(k) **Sealed Record.** A statement as to whether an order has been entered sealing all or any part of the record or transcript.

(l) **Certification.** A certification of the attorney of the appellant, or affidavit of the appellant representing himself or herself:

(1) That service of the notice of appeal has been made upon the reporter of the trial or proceeding;

(2) That the clerk of the district court or administrative agency has been paid the estimated fees for preparation of the designated reporter's transcript as required by Rule 24, or that appellant is exempt from paying such fees because of stated reasons;

(3) That the estimated fees for preparation of the clerk's or agency's record have been paid, or that appellant is exempt from paying such fees because of stated reasons;

(4) That all appellate filing fees have been paid, or that appellant is exempt from paying such fees because of stated reasons; and

(5) That service has been made upon all other parties required to be served pursuant to Rule 20, and that in all cases referred to in Section 67-1401(1), Idaho Code, service has been made upon the attorney general of the state of Idaho.

The appellant shall not be required to certify the payment of estimated fees in criminal appeals, appeals from denial of a petition for writ of habeas corpus, or petitions for post-conviction relief, if the district court has entered an order, or thereafter enters an order within 14 days of filing the notice of appeal, that such costs shall be at county expense.

(m) **Amended Notice of Appeal.** In the event the original notice of appeal erroneously states any of the information and requirements of this rule or additional facts arise after the filing of the initial notice of appeal, the appellant may thereafter file an amended notice of appeal correctly setting forth the facts and information. An amended notice of appeal shall be filed with the clerk of the district court in the same manner as the original notice of appeal but no filing fee shall be required. If the original notice of appeal

was timely filed from an appealable judgment, order or decree, the amended notice of appeal will relate back to the date of filing of the original notice of appeal. If the amended notice of appeal includes a request for preparation of additional transcripts, the notice must include an estimate of the number of additional pages requested and a certification that the amended notice has been served on each reporter of whom a request for additional transcript is made. Except in capital cases, an amended notice of appeal may not be filed after the record has been filed with the Supreme Court.

(n) **Signature.** The name and signature of the attorney for the appellant, or name of appellant if the appellant does not have an attorney.

(o) **Form.** The notice of appeal shall be in substantially the following form:

(Appellant's Attorney's Name)
Attorney for Appellant
Post Office Address
Phone Number
Email address. (Email address is required for attorneys).

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR _____ COUNTY (IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL COMMISSION) OF THE STATE OF IDAHO)

(Title of original action or	)	
proceeding together with	)	Case No. _____
the additional designation	)	NOTICE OF APPEAL
of parties as appellant and	)	
respondent)	)	

TO: THE ABOVE NAMED RESPONDENT(S), (Names) AND THE PARTY'S ATTORNEYS, (Names and Addresses) AND THE CLERK OF THE ABOVE ENTITLED COURT (ADMINISTRATIVE AGENCY).

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant(s) (Name) appeal(s) against the above named respondent(s) to the Idaho Supreme Court from (The final judgment) (The order, describing it) _____, entered in the above entitled action (proceeding) on the _____ day of _____, (Honorable Judge _____) (Chairman _____) presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule _____ I.A.R.

☐ This is an EXPEDITED APPEAL pursuant to I.A.R. 12.2.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

4. Has an order been entered sealing all or any portion of the record? If so, what portion?

5. (a) Is a reporter's transcript requested?

_____

(b) The appellant requests the preparation of the following portions of the reporter's transcript in [ ] hard copy [ ] electronic format [ ] both (check one): e.g.

(Specific proceedings identified by date and title of hearing if less than a standard transcript is being requested)

or (The reporter's standard transcript as defined in Rule 25(c), I.A.R.)

or (The reporter's standard transcript as defined in Rule 25(c), I.A.R. supplemented by the following:)

(Voir dire examination of jury)
(Closing arguments of counsel)
(The following reporter's partial transcript:)
(The testimony of witness "X")
(Conferences on requested instructions)
(Instructions verbally given by court)

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.: e.g.

(All requested and given jury instructions)
(The deposition of "X")
(Plaintiff's motion for continuance of trial)

7. Civil cases only. The appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court.

_____
_____
_____

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and Address: _____

Name and Address: _____

Name and Address: _____

(b)(1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) ☐ That the appellant is exempt from paying the estimated transcript fee because _____

_____

(c)(1) ☐ That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) ☐ That the appellant is exempt from paying the estimated fee for the preparation of the record because _____

_____

(d)(1) ☐ That the appellate filing fee has been paid.

(2) ☐ That appellant is exempt from paying the appellate filing fee because _____

_____

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS ____ day of ____, 20____.

/s/ Attorney's signature

_____

(Name of Attorney or Firm for Appellant)
Attorneys for the Appellant

(When certification is made by a party instead of the party's attorney, the following affidavit must be executed pursuant to Rule 17(i))

State of Idaho)
) ss.
County of _____)

_____ being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

_____

Signature of Appellant

Subscribed and Sworn to before me this ____, day of ____, 20____.

_____

Title
Residence

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 11, 1979, effective July 1, 1979; amended December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984;

amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 26, 1992, effective July 1, 1992; amended April 3, 1996, effective July 1, 1996; amended January 30, 2001, effective July 1, 2001; amended March 24, 2005, effective July 1, 2005; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended April 7, 2008, effective July 1, 2008; amended March 19, 2009, effective July 1, 2009; amended January 4, 2010, effective February 1, 2010; amended March 29, 2010, effective July 1, 2010; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013.)

Rule 21. Effect of failure to comply with time limits.

The failure to physically file a notice of appeal or notice of cross-appeal with the clerk of the district court or an administrative agency, or the failure to physically file a petition for rehearing or a challenge to a final redistricting plan with the clerk of the Supreme Court, each within the time limits prescribed by these rules, shall be jurisdictional and shall cause automatic dismissal of such appeal or petition, upon the motion of any party, or upon the initiative of the Supreme Court. Failure of a party to timely take any other step in the appellate process shall not be deemed jurisdictional, but may be grounds only for such action or sanction as the Supreme Court deems appropriate, which may include dismissal of the appeal. (Adopted March 25, 1977, effective July 1, 1977; amended April 18, 1983, effective July 1, 1983; amended November 20, 2012, effective January 1, 2013.)

Rule 23. Filing fees and clerk's certificate of appeal — Waiver of appellate filing fee.

(a) **Filing Fees.** The Clerk of the Supreme Court shall charge the following filing fees for appeals and petitions:

	Filing Fee
(1) Appeals in civil cases except for habeas corpus and post-conviction relief	$94.00
(2) Appeals from the Public Utilities Commission	$94.00
(3) Appeals from the Industrial Commission	$94.00
(4) Any cross-appeals in the appeals set out in (1), (2) and (3) above	$94.00
(5) Applications to intervene	$94.00
(6) Petitions pursuant to Rule 5 under the original jurisdiction of the Supreme Court except for habeas corpus and criminal cases	$76.00
(7) Petitions for rehearing except in criminal actions, or actions for habeas corpus or post-conviction relief	$71.00
(8) Appeals in criminal cases	$ None
(9) Petitions for writ of habeas corpus	$ None
(10) Petitions for post-conviction relief	$ None
(11) Petition for review of a decision of the Court of Appeals	$ None

(12) Review of Violent Sexual Predator designation ..... $ None
No appellate filing fee is required for agencies of the State of Idaho and Counties of the State of Idaho, including public defenders, pursuant to I.C. § 67-2301 and I.C. § 31-3212(2).

(b) **Collection and Transmittal to the Clerk of the Supreme Court.** The Clerk of the Supreme Court shall charge and collect the appropriate fee for any petitions initially filed with the Supreme Court. Upon the filing of a notice of appeal, or notice of cross-appeal, the clerk of the district court or administrative agency where the document is filed shall charge and collect the appropriate filing fee and the clerk shall forthwith forward a certified copy of the notice of appeal together with the filing fee to the Clerk of the Supreme Court; provided, an administrative agency may forward the filing fee to the Clerk of the Supreme Court with the Certificate of Appeal. The Clerk of the Supreme Court shall forward all such fees to the state treasurer for deposit in the appropriate fund.

(c) **Waiver of Appellate Filing Fee.** Any appellate filing fee set forth under subsection (a) of this rule may be waived pursuant to section 31-3220, Idaho Code, if such waiver is approved by the Supreme Court. Any party desiring waiver of the appellate filing fee in a civil appeal shall first make application to the district court or administrative agency from which the appeal is taken in accordance with the rules of procedure adopted by the judicial district of the district court or the administrative agency from which the appeal is taken. The order of the district court or administrative agency recommending waiver or no waiver of the appellate filing fee shall be filed by the appellant with the notice of appeal. The appellant shall also file with the notice of appeal a verified petition, motion or affidavit sworn to be the appellant stating:

(1) The name and address of the applicant.

(2) A request for the waiver of the appellate filing fee.

(3) A statement of the factual basis showing the indigency of the applicant to pay such filing fee.

(4) A certification by the applicant that the applicant believes that the applicant is entitled to waiver of the filing fee.

(d) **Request for Waiver.** All of said documents filed with the district court with the notice of appeal requesting a waiver of the appellate filing fee shall be forwarded by the clerk of the district court to the Supreme Court at the same time and with the notice of appeal. The Clerk of the Supreme Court, upon receiving the notice of appeal and the request for the waiver of the appellate filing fee shall mark all documents as "lodged" indicating the date and time received. The Supreme Court will rule upon the request for waiver of the appellate filing fee without further briefs or arguments unless otherwise ordered by the Court. If the Supreme Court grants the waiver of the appellate filing fee, it will enter an order to that effect and the Clerk of the Court shall thereupon file the notice of appeal and all other documents relating to the waiver of the appellate filing fee which shall be deemed filed on the date and time they were initially lodged with the Supreme Court. In

the event the Supreme Court denies the waiver of the appellate filing fee the Clerk shall so notify the appellant and the notice of appeal and all documents relating to the waiver of the appellate filing fee shall be lodged with the Supreme Court but not filed, and no appeal shall be pending with the Supreme Court unless and until the appellate filing fee is paid by the appellant.

(e) **Automatic Waiver.** In any appeal in which the appellant or cross-appellant is represented by the Idaho Legal Aid Services, the appellate filing fee shall automatically be waived and the clerk of the district court and the Clerk of the Idaho Supreme Court shall accept the notice of appeal or notice of cross-appeal without the payment of the appellate filing fee.

(f) **Certificate of Appeal.** Along with the notice of appeal or notice of cross-appeal, the clerk of the district court or the administrative agency shall prepare and send to the Clerk of the Supreme Court a Certificate of Appeal in the form provided by these rules. Provided, if the appeal is from the denial by the trial court of an application for waiver of fees, the clerk shall attach to the Certificate of Appeal copies of the motion or application for waiver of fees, all affidavits and documents presented in support of the motion or application and the order of the trial court denying the same.

(g) **Form of Certificate of Appeal.** The Certificate of Appeal made by the clerk of the district court or administrative agency for filing with the Supreme Court shall be in the following form:

IN THE DISTRICT COURT OF THE ____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR _____ COUNTY (IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL COMMISSION) OF THE STATE OF IDAHO)

(Title of original action or proceeding together with additional designation of parties as appellant and respondent)	)))))))	Supreme Court No. ____ CLERK'S CERTIFICATE OF APPEAL
_____		

Appeal from: _____ Judicial District,
_____ County.
Honorable _____ presiding.
(Public Utilities Commission) (Industrial Commission) _____ presiding
Case number from court or agency: _____
(Date and Description)
Order or judgment appealed from: _____
_____
Attorney for Appellant: _____
Attorney for Respondent: _____

Appealed by: _____
Appealed against: _____
Notice of Appeal filed: (date)
_____
Amended Notice of Appeal filed: (date)
_____
Notice of Cross-Appeal filed: (date)
_____
Amended Notice of Cross-Appeal filed: (date)
_____
Appellate fee paid: (date and amount) (none—explanation)
_____
Respondent or Cross-Respondent's request for additional record filed: (date)
_____
Respondent or Cross-Respondent's request for additional reporter's transcript filed: (date)
_____
Was District Court Reporter's transcript requested? _____
Estimated number of pages _____
If so, name of each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: _____

Name and address: _____

Name and address: _____

Dated _____

_____
Clerk of the (District Court)
Secretary of the
(Public Utilities Commission)
(Industrial Commission)

(Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979; amended December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 30, 1988, effective July 1, 1988; amended April 5, 1990, effective July 1, 1990; amended April 28, 1983, effective July 1, 1993; April 11, 1994, effective July 1, 1994; amended April 3, 1996, effective July 1, 1996; amended March 24, 2004, effective July 1, 2004; amended March 21, 2007, effective July 1, 2007; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1,

2008; amended January 4, 2010, effective February 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Rule 25. Reporter's transcript — Contents.

The reporter's transcript shall contain those portions of the record designated by the parties in conformance with and as defined in this rule.

(a) **Designation of Transcript.** The parties are responsible for designating the proceedings necessary for inclusion in the reporter's transcript on appeal. Parties are encouraged and expected to specify a transcript more limited than the standard transcript where appropriate. All requests for transcripts, including a request for a standard transcript in a criminal appeal, must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages.

(b) **Partial Transcript.** The partial transcript shall consist of those portions of the testimony and proceedings specifically designated in the notice of appeal, notice of cross-appeal, or request for additional reporter's transcript under Rule 19.

(c) **Standard Transcript — Civil Appeals.** There is no standard transcript in civil appeals. Requested proceedings must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages.

(d) **Standard Transcript — Criminal Appeals.** If any party requests the reporter's standard transcript, the transcript shall include all testimony and proceedings reported by the reporter in the trial of the action or proceedings or the hearing at which the guilty plea was entered and the sentencing hearing, except the following which shall not be included in a standard transcript:

(1) The voir dire examination of the jury.

(2) The opening statements and closing arguments of counsel.

(3) The conference on requested instructions, the objections of the parties to the instructions, and the court's ruling thereon.

(4) The oral presentation by the court of written instructions given to the jury and reported by the reporter. While the written requested instructions given by the district court in an action shall not be included in the reporter's transcript, they shall be included in the clerk's record if specifically requested pursuant to Rules 19 or 28(c).

(5) All other hearings and proceedings which were heard by the trial court at some time other than during the course of the trial. Transcripts of pre-trial and post-trial proceedings other than the entry of a guilty plea or sentencing must be specifically designated and requested.

(6) Oral arguments on appeal to the district court.

(e) **Standard Transcript in Death Penalty Cases.** In criminal appeals in which the death penalty was imposed the standard transcript shall include all hearings and proceedings held in the trial court of every nature and description.

(f) **Depositions or Statements.** Depositions or statements which are read into the record shall be reported by the reporter and shall be included

in the reporter's standard transcript or when specifically requested by a party. Depositions or statements which are admitted as exhibits in evidence but not read into the record, and depositions or statements which are not read into the record but which are considered by the court in the trial of the action or by an administrative agency in a proceeding, or in connection with any motion in the action or proceedings, shall not be included in the reporter's transcript, but shall be included in the clerks or agency's record if specifically requested pursuant to Rules 19 or 28(c).

(g) **Recorded Testimony.** Any audio recording or audio-visual recording of testimony given under oath and played during the proceeding shall be reported by the reporter and included in the reporter's standard transcript in the same manner as other testimony of the trial or hearing. (Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended April 3, 1996, effective July 1, 1996; amended March 18, 1998, effective July 1, 1998; amended March 1, 2000, effective July 1, 2000; amended March 21, 2007, effective July 1, 2007; amended March 19, 2009, effective July 1, 2009; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013.)

Rule 31. Exhibits, recordings and documents.

(a) **Lodging with Supreme Court.** The clerk of the district court or administrative agency shall lodge all of the following exhibits, recordings and documents with the Supreme Court:

(1) Copies of all requested documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a civil case and copies of all documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a criminal case, except that pictures or depictions of child pornography shall not be copied and sent to the parties or the Supreme Court unless specifically ordered by the court. Documentary exhibits in pdf format may be sent to the Supreme Court on a CD that includes an index. All other exhibits shall be retained by the clerk of the district court or administrative agency, unless otherwise ordered by the Supreme Court. The clerk shall forward to the Supreme Court photographs of all other exhibits in death penalty cases. Upon the request of a party in other cases, the clerk shall forward to the Supreme Court photographs of designated exhibits.

(2) All records and transcripts filed with the district court or administrative agency.

(3) All transcripts from the magistrate's division of the district court.

(4) All audio and audio-visual recordings offered or played during the proceedings.

(b) **Documentary Exhibits.** In any criminal or post-conviction case where a documentary exhibit, including a pre-sentence report, is transmitted to the Supreme Court for use in an appellate proceeding, the district

court shall serve a copy of the documentary exhibit on the attorney general and on appellate counsel for the defendant, subject to the confidentiality provisions of I.C.A.R. 32. Copies of documentary exhibits in pdf format may be sent on a CD that includes an index. However, pictures or depictions of child pornography that are separately identified pursuant to I.C.R. 32 (e)(1) shall not be transmitted to the parties or the Supreme Court unless specifically requested.

(c) **Certificate of Clerk or Secretary.** The clerk, secretary, or the officer responsible for collecting exhibits offered or admitted at the trial or hearing shall file a certificate with the Supreme Court certifying the exhibits, recordings and copies of documents which have been lodged with the Supreme Court, specifically identifying each item lodged, and listing and describing those exhibits which are retained by the clerk or secretary. In the event there are no exhibits to be lodged with the Supreme Court, the certificate shall specifically state that no exhibits were lodged.

(d) **Time for Lodging.** Unless otherwise directed by the Supreme Court, the above exhibits, recordings and documents shall be lodged with the Supreme Court at or before the time that the reporter's transcript and clerk's record are lodged with the Supreme Court.

(e) **Disposition of Exhibits.** Unless otherwise ordered by the Supreme Court under Rule 31.1, the Supreme Court will retain the exhibits until ninety (90) days after final determination of the appeal, at which point the court will return all original exhibits and retain an electronic copy of all documentary exhibits. (Adopted June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 18, 1998, effective July 1, 1998; amended November 17, 1999, effective December 1, 1999; amended March 22, 2002, effective July 1, 2002; amended April 7, 2008, effective July 1, 2008; amended March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Rule 35. Content and arrangement of briefs.

JUDICIAL DECISIONS

ANALYSIS

Argument.
Failure to Raise Issue.

Argument.

Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by an appellate court. Minor Miracle Prods., LLC v. Starkey, — Idaho —, 271 P.3d 1189, 2012 Ida. LEXIS 12 (2012).

Failure to Raise Issue.

An appellant's failure to include in his initial appellate brief a fair statement of an issue presented for review results in waiver of the issue. This rule will be relaxed when the issue is supported by argument in appellant's opening brief. Appellant may not raise an issue, including statute of limitations, in a reply brief. Weisel v. Beaver Springs Owners Ass'n, — Idaho —, 272 P.3d 491, 2012 Ida. LEXIS 57 (2012).

Where a party requests attorney fees on appeal, but does not address the issue in the argument section of the party's brief, the court will not address the issue because the party has failed to comply with this rule. Morrison v. Northwest Nazarene Univ., —

Idaho —, 273 P.3d 1253, 2012 Ida. LEXIS 82 (2012).

Cited in: Enriquez v. Idaho Power Co., — Idaho —, 272 P.3d 534, 2012 Ida. LEXIS 61 (2012); Trotter v. Bank of N.Y. Mellon, 152 Idaho 842, 275 P.3d 857, 2012 Ida. LEXIS 84 (2012); Peterson v. Private Wilderness, LLC, — Idaho —, 273 P.3d 1284, 2012 Ida. LEXIS 85 (Mar. 23, 2012).

Rule 40. Taxation of costs.

Cited in: Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011).

Rule 41. Attorney fees on appeal.

Cited in: Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011).

Rule 42. Petition for rehearing.

(a) **Time for Filing — Filing Fee.** Petitions for rehearing must be physically filed with the Clerk of the Supreme Court, together with the filing fee, within 21 days after the filing date of the Court's opinion, and must be served upon all parties to the appeal or proceeding. If the opinion is modified, other than to correct a clerical error, an aggrieved party may physically file another petition for rehearing within 21 days from the date of the modified opinion and serve all adverse parties in the appeal or proceeding. No response to any petition for rehearing shall be made except upon direction of the Court.

(b) **Briefs on the Petition.** A brief or memorandum in support of the petition must be filed within 14 days of the filing date of the petition and shall be typewritten on letter size paper. If the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. An original and six (6) copies of the petition and brief shall be filed with the Clerk of the Supreme Court.

(c) **Oral Argument on Petition for Rehearing.** There shall be no oral argument upon the petition for rehearing of an appeal or proceeding unless ordered by the Supreme Court.

(d) **Notice of Rehearing — Briefs.** Copies of an order granting or denying a rehearing shall be served by the Clerk of the Supreme Court upon all parties to the appeal or proceeding. The order may set forth the issues to be reheard, and shall direct the time and order for the filing of briefs. A brief in support of or in opposition to a petition for rehearing need not be bound nor have any colored cover.

(e) **Oral Argument on Rehearing.** If the Supreme Court grants a petition for rehearing, argument upon rehearing shall be scheduled by the Court in the same manner as argument on the merits of an appeal or petition. (Adopted March 25, 1977, effective July 1, 1977; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended January 4, 2010, effective February 1, 2010; amended March

18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013.)

Rule 46. Extension of time generally.

The time prescribed by these rules for any act, except the physical filing of a notice of appeal, a notice of cross-appeal, petition for rehearing, or a challenge to a final redistricting plan may be enlarged by the Court or any Justice thereof for good cause shown upon the motion of a party. Applications for extensions of time for filing briefs shall also be subject to the requirements of Rule 34(e). Any motion for the extension of time to do an act must be served upon all parties, but the order enlarging the time for performance may be issued immediately and ex parte in the discretion of the Court or any Justice thereof, subject to review upon any written objection filed within seven (7) days of service of the motion. Any order of extension of time to do an act shall be served by the Clerk on all parties. (Adopted March 25, 1977, effective July 1, 1977; amended March 24, 2005, effective July 1, 2005; amended November 20, 2012, effective January 1, 2013.)

IDAHO COURT OF APPEALS

Rule 118. Petition for review by the Supreme Court.

(a) **Petition, Time for Filing, Ruling by Supreme Court.** Any party to a proceeding aggrieved by opinion or order of the Court of Appeals may physically file a petition for review with the Clerk of the Supreme Court within twenty-one (21) days after the announcement of the opinion or order, or after the announcement of an order denying rehearing, or after the announcement of an opinion on rehearing or after an opinion is modified without rehearing in a manner other than to correct a clerical error. It is not necessary to file a petition for rehearing with the Court of Appeals before filing a petition for review under this rule. A brief in support of the petition for review must be filed with the petition or within fourteen (14) days thereafter; however, if the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. Such petition shall be processed within the time limits and in the manner prescribed for a petition for rehearing of a Supreme Court opinion as provided by Rule 42. There shall be no response to a petition for review, unless the Supreme Court requests a party to respond to the petition for review before granting or denying the same. The filing of a petition for review under this rule does not preclude the filing of a timely petition for rehearing under Rule 116; and no action will be taken by the Supreme Court on a petition for review until the Court of Appeals has made a final ruling upon and determination of all petitions for rehearing. If a petition for review is granted, the Supreme Court will include in its order the sequence for the filing of briefs by the parties before oral argument. A brief in support of or in opposition to a petition for review need not be bound nor have any colored cover.

(b) **Criteria for Granting Petitions for Review by the Supreme Court.** Granting a petition for review from a final decision of the Court of Appeals is discretionary on the part of the Supreme Court, and will be granted only when there are special and important reasons and a majority of the Justices direct that the petition be granted. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of the Court's discretion:

(1) Whether the Court of Appeals has decided a question of substance not heretofore determined by the Supreme Court;

(2) Whether the Court of Appeals has decided a question of substance probably not in accord with applicable decisions of the Idaho Supreme Court or of the United States Supreme Court;

(3) Whether the Court of Appeals has rendered a decision in conflict with a previous decision of the Court of Appeals;

(4) Whether the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of the Supreme Court's power of supervision;

(5) Whether a majority of the judges of the Court of Appeals, after decision, certifies that the public interest or the interests of justice make desirable a further appellate review. (Adopted April 17, 1981, effective July 1, 1981; amended March 24, 1982, effective July 1, 1982; amended March 28, 1986, effective July 1, 1986; amended March 23, 1990, effective July 1, 1990; amended January 4, 2010, effective February 1, 2010; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013.)

LOCAL RULES OF PROCEDURE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Part 1. CIVIL RULES AND GENERAL PROVISIONS.

Rule
7.1. Motion Practice.
16.1. Scheduling Conference, Voluntary Case Management Conference (VCMC) and Litigation Plans.
67.1. Deposits.
67.2. Withdrawal of a Deposit Pursuant to Federal Rule of Civil Procedure 67.

Part 2. CRIMINAL RULES.

32.1. Disclosure of Investigative Reports by United States Probation Office.
46.2. Pretrial Services.

PART 1. CIVIL RULES AND GENERAL PROVISIONS.

III. PLEADINGS AND MOTIONS.

Rule 7.1. Motion Practice.

(a) **General Requirements.**

(1) The moving and responding parties are not required to submit an additional copy of any motion, memorandum of points and authorities, and supporting materials, including affidavits and/or declarations, unless required by the judge assigned to the matter.

(2) No memorandum of points and authorities in support of or in opposition to a motion shall exceed twenty (20) pages in length, nor shall a reply brief exceed ten (10) pages in length, without express leave of the Court which will only be granted under unusual circumstances. The use of small fonts and/or minimal spacing to comply with the page limitation is not acceptable.

(3) Documents being submitted in response to, in support of, or in opposition to other documents shall be clearly labeled with the docket number of the motion or response in the caption.

(4) Parties shall submit proposed orders concerning routine or uncontested matters only via e-mail in accordance with ECF Procedures.

(5) Any party, either proposing or opposing a motion or other application, who does not intend to urge or oppose the same must immediately notify opposing counsel and the Clerk of Court by filing a pleading titled "Non-Opposition to Motion."

(6) The time periods specified herein and automatically generated by CM/ECF for service do not supersede, alter or amend any otherwise applicable Federal or Local Rule specifying a different time period for service or method of computing time.

(b) **Requirements for Submission — Moving Party.**

(1) Each motion, other than a routine or uncontested matter, must be accompanied by a separate brief, not to exceed twenty (20) pages, containing all of the reasons and points and authorities relied upon by the moving party. In motions for summary judgment under Federal Rule of

Civil Procedure 56, in addition to the requirements contained in Federal Rule of Civil Procedure 56(c)(1), the moving party shall file a separate statement of all material facts, not to exceed ten (10) pages, which the moving party contends are not in dispute.

(2) The moving party shall serve and file with the motion affidavits required or permitted by Federal Rule of Civil Procedure 6(c), declarations submitted in accordance with 28 U.S.C. § 1746, copies of all photographs, documentary evidence and other supporting materials on which the moving party intends to rely.

(3) The moving party may submit a reply brief, not to exceed ten (10) pages, within fourteen (14) days after service upon the moving party of the responding party's memorandum of points and authorities.

(4) If relief is sought under any of the Federal Rules of Civil Procedure dealing with discovery practices, the party seeking or opposing such relief shall comply with the specific practices and procedures governing discovery motions found in Local Rules 37.1 and 37.2.

(c) **Requirements for Submission — Responding Party.**

(1) The responding party shall serve and file a response brief, not to exceed twenty (20) pages, within twenty-one (21) days after service upon the party of the memorandum of points and authorities of the moving party. The responding party shall serve and file with the response brief any affidavits, declarations submitted in accordance [with] Federal Rule of Civil Procedure 56(c) and (d), declarations submitted in accordance with 28 U.S.C. § 1746, copies of all photographs, documentary evidence, and other supporting materials on which the responding party intends to rely.

(2) In responding to a motion for summary judgment under Federal Rule of Civil Procedure 56, in addition to the requirements contained in Federal Rule of Civil Procedure 56(c)(1), the responding party shall also file a separate statement, not to exceed ten (10) pages, of all material facts which the responding party contends are in dispute.

(3) The response brief, should be clearly identified as a "Response to the Motion to _____ filed on _____ " and must contain all of the reasons and points and authorities relied upon by the responding party.

(d) **Objections to Evidence.**

(1) Any objections to (and any argument regarding) the admissibility of evidence offered in support of or opposition to a motion, including a motion for summary judgment, must be presented as an appendix, not to exceed five (5) pages, to the objecting party's response brief or reply brief to the underlying motion and not in a separate motion to strike.

(2) Unless made at trial, a motion to strike may be filed only if it is authorized by statute or rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited (and not authorized) by a statute, rule, or court order. This rule does not limit a party's ability to file a motion to strike otherwise permitted by the Federal Rules of Civil Procedure.

(e) **Determination of Motions by the Court and Scheduling for Oral Argument, if Appropriate.**

(1) Hearings.

(i) If the presiding judge determines that oral argument on the motion is appropriate, then the courtroom deputy, after considering appropriate time frames to respond to the motion, will promptly advise the attorney for the moving party of a hearing date for oral argument on the motion. The courtroom deputy will then prepare and file a notice of hearing.

The attorney for the moving party is required to resolve any conflicts regarding the hearing date with opposing counsel and then contact the courtroom deputy for a new hearing date if conflicts develop over an initial hearing date. The courtroom deputy will then serve a notice of the new hearing date within five (5) days.

(ii) If the presiding judge determines that oral argument will not be necessary, then the courtroom deputy will notify counsel for the moving party, who will then be responsible for notifying the other parties that the matter will be decided on the briefs.

If the presiding judge later determines that oral argument would be of assistance, then the moving party will be so notified by the courtroom deputy.

(2) Attorneys are encouraged to communicate with the courtroom deputies regarding the status of any motion.

(3) The parties may request that the hearing be conducted telephonically or by video conference by contacting the courtroom deputy. Video conferencing is available in Boise, Pocatello, Moscow and Coeur d'Alene.

(f) **Effects of Failure to Comply with the Rules of Motion Practice.**

(1) Failure by the moving party to file any documents required to be filed under this rule in a timely manner may be deemed a waiver by the moving party of the pleading or motion. Except as provided in subpart (2) below, if an adverse party fails to timely file any response documents required to be filed under this rule, such failure may be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application. In addition, the Court, upon motion or its own initiative, may impose sanctions in the form of reasonable expenses incurred, including attorney fees, upon the adverse party and/or counsel for failure to comply with this rule.

(2) In motions brought under Federal Rule of Civil Procedure 56, if the non-moving party fails to timely file any response documents required to be filed, such failure shall not be deemed a consent to the granting of said motion by the Court. However, if a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Federal Rule of Civil Procedure 56(c) or Local Rule 7.1(b)(1) or (c)(2), the Court nonetheless may consider the uncontested material facts as undisputed for purposes of consideration of the motion, and the Court may grant summary judgment if the motion and supporting

materials — including the facts considered undisputed — show that the moving party is entitled to the granting of the motion.

(g) **Requests to Extend Motion Briefing Period or to Vacate or Reschedule Motion Hearing Dates.** (*See* Dist. Idaho Loc. Civ. R. 6.1.)

(Amended December 31, 2004, effective January 3, 2005; technical amendments made March 31, 2005; revised January 2, 2007, effective January 1, 2007; amended effective December 1, 2009; amended December 30, 2010, effective January 1, 2011; amended effective January 1, 2012; amended effective January 1, 2013.)

Rule 16.1. Scheduling Conference, Voluntary Case Management Conference (VCMC) and Litigation Plans.

As a general rule, scheduling conferences will not be held in the following type of cases, unless otherwise ordered by the court:

(1) A petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence.

(2) An action to enforce or quash an administrative summons or subpoena.

(3) An action by the United States to recover a benefit payment.

(4) An action by the United States to collect on a student loan.

(5) A proceeding ancillary to proceedings in other courts.

(6) Petition to review a decision denying social security benefits.

(7) Farm Service Administration Foreclosure Actions.

In all other civil cases, unless otherwise ordered by the Court, a scheduling conference will be conducted within ninety (90) days after the complaint has been filed. The Court, in its discretion, may use telephonic/video conferencing with the parties for this purpose. The Court will notify all parties of the date and time of the scheduling conference.

When the Clerk provides notice to the parties of the time and date of the scheduling conference, counsel will also be provided with a scheduling conference/litigation plan form used by the trial judge who has been assigned the case. This form also contains requests for discovery information that counsel will discuss at their Federal Rule of Procedure 26(f) conferences. Each judge's litigation plan form is available on the Court's website.

At least twenty-one (21) days before the time and date set for the scheduling conference, counsel must confer and discuss each of the following items contained on the scheduling conference/litigation plan form. These include, but are not necessarily limited, to the following:

(1) Discuss the requirement to make initial disclosures within fourteen (14) days.

(2) Expert witness reports/testimony cutoff dates.

(3) Number and length of depositions.

(4) Discovery cutoff dates.

(5) Joinder of parties and amendment of pleadings cutoff date.

(6) Dispositive motions filing cutoff date.

(7) Availability of Voluntary Case Management Conference (VCMC).
(8) Alternative Dispute Resolution: (Dist. Idaho Loc. Civ. R. 16.4)
(A) Settlement Conferences
(B) Arbitration
(C) Mediation
(9) Status conference date, if counsel believe one will be necessary.
(10) Pretrial conference date (to be entered by the Court).
(11) Estimated length of trial.
(12) Trial date (to be entered by the Court).

(A) Voluntary Case Management Conference.

(1) **Definition.** Voluntary Case Management Conference (VCMC) is a tool whereby a Magistrate Judge hosts an informal meeting with counsel in civil cases to identify areas of agreement, clarify and focus the issues, and encourage the parties to enter procedural and substantive stipulations. The VCMC conference is not a settlement conference; it is an effort to: (1) assist in the reduction of expense and delay; and (2) enhance direct communication between the parties about their claims.

(2) **Timing.** During the Scheduling Conference, the trial judge will discuss with the parties whether the case would benefit from a VCMC conference before a designated Magistrate Judge. If the trial judge and the parties agree that a VCMC conference is warranted, the parties will be ordered to appear at a VCMC conference within 45 days after the Scheduling Conference.

(a) Counsel for any party may request an earlier VCMC conference by contacting the court's ADR Coordinator. The ADR Coordinator will discuss the request with the assigned trial judge, who will determine whether it is appropriate to refer the action to an earlier VCMC conference.

(b) The Magistrate Judge conducting the VCMC conference may order the VCMC conference be conducted by telephone upon request by counsel for any party.

(3) **Process.** At the VCMC conference, the Magistrate Judge will discuss the parties' claims and defenses in order to suggest stipulations and pretrial procedures that may reduce the expense and delay in the case. The Magistrate Judge assigned to the VCMC conference will generally be the same Magistrate Judge assigned to conduct a judicially supervised settlement conference in the case, although he or she will not be the trial judge assigned to the case or designated for referrals by a District Judge in the same case.

(a) All communications during the VCMC conference shall be privileged and confidential.

(b) If necessary, the Magistrate Judge conducting the VCMC conference may, after consultation with the trial judge, modify the scheduling order based on agreements reached at the VCMC conference.

Fourteen (14) days after counsel have conferred on the scheduling conference/litigation plan form, counsel must make their initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1).

After counsel have conferred on the scheduling conference and litigation plan form, counsel must forward to the Court the scheduling conference and litigation plan form which they have jointly stipulated to or, in the event counsel are unable to agree, their proposed plan within the time period prescribed by the judge conducting the scheduling conference.

After the scheduling conference, the court will prepare and enter an order which will provide time frames and dates for the items contained on the scheduling/ligitation plan form. Upon the Court's determination, certain cases can be exempted from these requirements and the parties will be so notified.

(B) **Electronically Stored Information.** The parties shall discuss the parameters of their anticipated e-discovery at the Rule 26(f) conference, as well as at the Rule 16 scheduling conference. More specifically, during the Rule 26(f) conference, the parties shall exchange the following information and discuss the following e-discovery issues:

(1) the names of the most likely custodians of relevant electronically stored information, as well as a brief description of each person's title and responsibilities;

(2) a list of each relevant electronic device or system that has been in place at all relevant times and a general description of each device or system including, but not limited to, the nature, scope, character, organization, and formats employed in each device or system. The parties should also discuss whether their electronically stored information is reasonably accessible. Electronically stored information that is not reasonably accessible may include information created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval otherwise involves undue burden or substantial cost;

(3) a brief description of the steps each party has taken to segregate and preserve all potentially relevant electronically stored information;

(4) the potential for conducting discovery of electronically stored information in phases as a method for reducing costs and burden;

(5) the methodology the parties shall employ to conduct an electronic search for relevant electronically stored information and any restrictions as to the scope and method of the search;

(6) the format for production (e.g., text searchable image files such as PDF or TIFF) of electronically stored information; and

(7) any problems reasonably anticipated to arise in connection with e-discovery (e.g., email duplication).

If the parties fail to reach agreement on any of the e-discovery issues addressed in subparts (4) through (7) above prior to the Rule 16 scheduling conference, the parties shall bring this fact to the Court's attention at the Rule 16 scheduling conference and discuss whether the Court's

intervention on those topics is necessary. (Amended December 31, 2004, effective January 3, 2005; revised January 2, 2007, effective January 1, 2007; amended effective December 1, 2009; amended effective January 1, 2013.)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.

Rule 67.1. Deposits.

(a) Whenever a party seeks an order for money to be deposited by the clerk in an interest-bearing account, the party must prepare a form of order in accord with the following.

(b) The following form of standard order must be used for the deposit of registry funds into interest-bearing accounts or the investment of such funds in an interest-bearing instrument:

> IT IS ORDERED that the Clerk of Court invest the amount of $_____ in the Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 U.S.C § 2045, and said funds to remain invested pending further order of the Court.
>
> IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and directed by this Order to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

(Amended December 31, 2004, effective January 3, 2005; amended effective January 1, 2013.)

Rule 67.2. Withdrawal of a Deposit Pursuant to Federal Rule of Civil Procedure 67.

(a) **Order of the Court.** Funds may only be withdrawn upon an order of this Court. Such order must specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

(b) **Application Process.** Any person seeking withdrawal of monies, which were provided to the court under Local District Court Rule 67.1 and subsequently deposited into an interest-bearing account or instrument as required shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number, and the mailing address of the ultimate recipient of the funds. (Amended December 31, 2004, effective January 3, 2005; revised January 2, 2007, effective January 1, 2007; amended December 30, 2010, effective January 1, 2011; amended effective January 1, 2013.)

PART 2. CRIMINAL RULES.

Rule 32.1. Disclosure of Investigative Reports by United States Probation Office.

(a) **Presentence Report, Sentencing Recommendation and Confidentiality.**

(1) Presentence reports are not docketed in criminal cases and are not available for public inspection. They shall not be reproduced or copies distributed to other agencies or other individuals unless the Chief United States Probation Officer grants permission.

(2) In addition to the presentence report, the probation officer will submit a separate document entitled "Sentencing Recommendation" to the Court. The Sentencing Recommendation is for the benefit of the Court and will not be disclosed to the government, the defendant, or defendant's counsel or to any other person or party, unless authorized by the sentencing judge, as provided in subsection (3).

(3) The Sentencing Recommendation may be disclosed to the government and defense counsel if authorized by the sentencing judge. Such authorization shall be communicated to the Chief United States Probation Officer in writing or electronically and shall specify whether the authorization applies to all of the individual sentencing judge's cases or to selected cases only. The sentencing judge may revoke the authorization at any time by so notifying the Chief United States Probation Officer in writing or electronically.

(4) If a sentencing is scheduled before a visiting judge, the probation officer shall contact the staff of the visiting judge to determine whether the visiting judge would like the Sentencing Recommendation disclosed to the government and defense counsel.

(5) Probation reports, violation of supervised release reports, and sentencing recommendations prepared for these reports are governed by these same provisions.

(b) **Presentence Report.**

(1) Sentencing shall occur no less than seventy (70) days following the entry of a guilty plea or nolo contendere plea or verdict of guilty. At the time the Court sets the date of sentencing, the Court will advise counsel and the probation office of the dates the presentence report will be disclosed to counsel, the date counsel is to submit any objections to the probation office, and the date on which the presentence report, and any amendments thereto, will be submitted to the Court and counsel. Should counsel or the probation office be unable to comply with the Court's specified dates, they shall notify the Court and request a continuance of the sentencing hearing.

(2) The probation officer shall timely notify counsel of the date and place of the initial and subsequent interviews for the presentence report. Counsel shall be provided a reasonable opportunity to attend any interview of the defendant during the course of the presentence investigation.

(3) Not less than thirty-five (35) days prior to the date of sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Within fourteen (14) days, counsel shall file with the Clerk of Court and submit a copy to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(4) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may request counsel for both parties to meet with the probation officer to discuss unresolved factual and legal issues.

(5) Seven (7) days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. If the sentencing judge has authorized its disclosure, the Sentencing Recommendation shall be disclosed to counsel for the defendant and the government together with the presentence report and addendum. Counsel shall not be permitted to discuss the Sentencing Recommendation with the probation officer.

(6) Except with regard to any objection made under subdivision (a) that has not been resolved, the presentence report may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.

(7) The times set forth in this rule may be modified by the Court for good cause shown, except that the thirty-five (35) day period set forth in subsection (b)(3) may only be shortened if the defendant expressly consents.

(8) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Federal Rule of Criminal Procedure 32.

(9) The presentence report shall be deemed to have been disclosed when a copy of the report is delivered by hand, fax, or e-mail, one (1) day after the report's availability for inspection is orally communicated to the parties, or three (3) days after a copy of the report or notice of its availability is mailed.

(c) **Confidentiality of Probation Records.**

(1) Investigative reports and supervision records of this Court maintained by the probation office are confidential and not available for public inspection. However, the Chief Probation Officer may disclose these records to federal, state, or local Courts; correctional and law enforcement agencies, contacted treatment providers; or paroling authorities who have a legal, investigative, or custodial interest in that individual.

(2) Any party, other than those defined in subsection (c)(1), seeking access to the confidential records maintained by the probation office, must file a written request to the Chief Probation Officer that conforms to the requirements of *The Guide to Judiciary Policy, Volume 20, Chapter 8* (which is available at www.idp.uscourts.gov/disclosure.html).

(d) **Rule Not to Supersede or Void Provisions of Federal Rule of Criminal Procedure 32(c).** Nothing in this rule shall be construed to supersede or void the provisions of Fed. R. Crim. P. 32(c)(1). (Amended December 31, 2004, effective January 3, 2005; revised January 2, 2007, effective January 1, 2007; amended effective January 1, 2013.)

Rule 46.2. Pretrial Services.

Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. §§ 3152-3155), the Court authorizes the United States Probation Office for the District of Idaho to establish a Pretrial Services Division as provided for by the Act.

At the discretion of the Chief U.S. Probation Officer, personnel within the probation office shall be designated to perform pretrial services pursuant to the Act.

Upon notification that a defendant has been charged with an offense, either felony or misdemeanor, pretrial service officers will conduct a pre-release investigation as soon as practicable. The judicial officer setting bail or reviewing a bail determination shall receive and consider all reports submitted by pretrial service officers.

Pretrial service reports shall be made available to the attorneys for the accused and the attorneys for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein. In the event a pretrial service report is received in evidence at a hearing on terms and conditions of release, it shall be sealed by the Court and not made a matter of public record.

Pretrial service officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or conditions of the release. Supervision will be conducted in accordance with 18 U.S.C. § 3154, *The Guide to Judiciary Policy*, Volume 8, and District of Idaho operations policy.

The Chief U.S. Probation Officer of the District is authorized to approve interdistrict travel for persons under the supervision of the Court. (Amended December 31, 2004, effective January 3, 2005; revised January 2, 2007, effective January 1, 2007; amended effective January 1, 2013.)

LOCAL BANKRUPTCY RULES OF PROCEDURE FOR THE UNITED STATES BANKRUPTCY COURT IN THE DISTRICT OF IDAHO

Rule
2002.2. Notice and Hearing.
2002.3. Filing and Service of Plans.
2002.5. Filing and Confirmation of Chapter 13 Plan.
Rule
7067.1. Deposits (Registry Fund).
7067.2. Withdrawal of a Deposit.

Rule 2002.2. Notice and Hearing.

(a) **Applicability.** All contested matters under Fed. R. Bankr. P. 9014, all motions under Fed. R. Bankr. P. 9013, and all other matters requiring or with provision for a hearing under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, shall be subject to the following requirements and conditions, in addition to other and further requirements as may be imposed by rule or applicable law.

(b) **Notice.**

(1) By whom given. Except for notices specified in Fed. R. Bankr. P. 2002(a)(1), (a)(7), (b)(2) chapter 13 only, (e) and (f), all notices shall be given by the party requesting an order or other relief.

(2) To whom given.

(A) "Notice," as used in this rule shall mean notice by mail or electronic means to all creditors, equity security holders, trustees and indenture trustees, the debtor, the chairman of any committee appointed in the case, U.S. Trustee and any other parties in interest. A different method or less inclusive notice may be given only if allowed by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, or if authorized by a judge.

(B) The addresses of notices shall be in accordance with Fed. R. Bankr. P. 2002(g) and 11 U.S.C. § 342.

(i) A Master Mailing List of names and addresses, as filed with the court, and updated in accordance with Rule 2002(g) and 11 U.S.C. § 342, may be downloaded from PACER which can be accessed from the court's website at www.id.uscourts.gov.

(ii) Required notice to all creditors is presumed to be appropriate if sent to all entries on the Master Mailing List, which has been provided by the clerk.

(iii) Notices sent by the clerk, BNC, or some other person or entity as the court may direct, pursuant to 11 U.S.C. §§ 341(a), 342(a) and (b), and Fed. R. Bankr. P. 2002, that are determined undeliverable will be forwarded to the debtor's attorney (or debtor if *pro se*). Any notice, other than a § 341(a) meeting of creditors, or a copy of the final order of discharge, which is returned to the court, shall be destroyed after processing.

(3) Proof of Service. After giving notice, the moving party shall file within five (5) days of the notice, a certificate of mailing with a list of the persons and their addresses to whom the notice was sent. If notice to all creditors is required, the certificate of service must certify mailing (or other services) on all parties included on the Master Mailing List described in subdivision (b)(2)(B) of this rule.

(c) **Objection.** If the notice provides for the filing of an objection, a party objecting to an act or the entry of an order shall file with the clerk and serve on the moving party, a written objection within the time set forth in the notice. The objection shall state, with specificity, the grounds therefor.

(d) **When hearing is not required.** A request for an order under Fed. R. Bankr. P. 9013, where only notice and an opportunity for a hearing are required, may proceed with the service of a motion/application complying with this Local Bankruptcy Rule.

(1) Form of Disclosure. The following language must be placed immediately below the caption of the motion/application:

Notice of Motion for [name of motion or application] and Opportunity to Object and for a Hearing

No Objection. The Court may consider this request for an order without further notice or hearing unless a party in interest files an objection within [_____] days of the date of service of this notice.

If an objection is not filed within the time permitted, the Court may consider that there is no opposition to the granting of the requested relief and may grant the relief without further notice or hearing.

Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.

Hearing on Objection. The objecting party shall also contact the court's calendar clerk to schedule a hearing on the objection and file a separate notice of hearing.

(2) Time of Negative Noticing. The minimum number of days under this Local Rule will be 14 days unless another notice period is applicable under the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

(3) Statement of No Objection. To obtain the requested order if no objection is filed within the applicable notice period, the movant shall file a *Statement of No Objection* and a proposed Order. The statement shall contain the Bankruptcy Court docket number for the initial motion/application sent under subsection (d) of this Rule, any related certificate of service, and a certification that no objection has been received to the requested relief.

(4) Hearing on Objection. If the objecting party does not schedule a hearing as provided in the notice, the moving party may set the matter for a hearing.

(e) **Hearing.**

(1) **By moving party.** Counsel for the party who desires or is required to set a matter for hearing shall be responsible for contacting the calendar clerk and obtaining a date for such hearing. Unless the moving party obtains a hearing date and properly files and serves the notice, the matter will not be heard. Counsel obtaining a hearing date shall be responsible for providing notice to all parties as provided by this rule.

(2) **By objecting party.** If a party objects to an act or the entry of an order and the matter is not previously set for hearing, counsel for the objecting party shall be responsible for contacting the calendar clerk and obtaining a hearing date, as provided in subdivision (e)(1) of this rule and notifying the moving party and all other parties as required by this rule.

(3) Any party requesting a hearing date from the calendar clerk (or in open court) shall file the notice of hearing and related pleadings at least seven (7) days prior to the scheduled hearing date. Failure to do so may result in the hearing being removed from the calendar.

(f) **Vacation or continuance of hearing.** A hearing may be vacated or continued for good cause by approval of the court:

(1) On a judge's own motion;

(2) Upon submission, prior to hearing, of an agreed order resolving the matter endorsed by the parties or their counsel of record;

(3) Upon agreement of the parties, set forth in writing and filed no later than the day before the scheduled hearing, and for good cause shown, or, if settled later than the day before the hearing, upon an agreement read into the record at the time of the hearing by counsel for one of the parties; or

(4) On the request of a party after notice to all opposing parties filed and served at least three (3) days prior to the scheduled hearing, accompanied by an affidavit stating the grounds for such request, unless a judge for cause shown waives the requirements of this rule. (Adopted January 5, 2006, effective January 1, 2006; revised January 2, 2007, effective January 1, 2007; revised effective December 1, 2009; amended December 27, 2010, effective January 1, 2011; amended effective January 1, 2013.)

Rule 2002.3. Filing and Service of Plans.

(a) **Chapter 13 Cases.**

(1) The BNC, or some other person or entity as the court may direct, will send plans filed with the petition in chapter 13 cases with the § 341(a) notice to creditors. In such cases, and provided all other schedules and statements are also filed with the petition, the accelerated confirmation process of LBR 2002.5 shall apply and the notice of the § 341(a) meeting of creditors issued by the BNC shall advise creditors of the confirmation hearing date.

(2) In all cases where the plan is not filed with the petition, the debtor shall be responsible for sending copies of the chapter 13 plan and notice of hearing on confirmation to all creditors and parties in interest. Such notice must comply with Fed. R. Bankr. P. 2002 and 3015, and must be served at least 28 days prior to the initial confirmation hearing. In such cases, the notice of the § 341(a) meeting issued by the BNC shall advise creditors of the confirmation hearing date. Such cases will not be subject to the accelerated confirmation procedures of LBR 2002.5. The debtor shall immediately after serving the creditors with the plan, file proof of service with the clerk of the court.

(b) **Other Cases.** In all chapter 11 and 12 cases, the debtor or plan proponent shall give notice of the hearing on confirmation of the plan. The debtor or plan proponent shall send copies of the plan, with such notice, to all creditors and parties in interest prior to the hearing date set for confirmation of the plan. In chapter 11 cases, except if governed by 11 U.S.C. § 1125(f) and Fed. R. Bankr. P. 3017.1, the debtor or plan proponent shall also send copies of the order approving disclosure statement and notice of the confirmation hearing, together with a copy of the disclosure statement, plan, ballot, and any amendments or addenda to the original plan or disclosure statement. (Adopted January 5, 2006, effective January 1, 2006; revised January 2, 2007, effective January 1, 2007; amended effective January 1, 2013.)

Rule 2002.5. Filing and Confirmation of Chapter 13 Plan.

(a) **Chapter 13 Plan and Schedules Filed with Petitions.**

(1) **Applicability.** When the chapter 13 plan and all other schedules and statements are filed with the bankruptcy petition, as identified in LBR 2002.3, an accelerated confirmation process is available provided the requirements set forth herein in subpart (a) are satisfied.

(2) **Notice to Creditors.** The BNC shall send to the debtor, debtor's attorney, the trustee, and all creditors and parties in interest, a notice that advises them of the provisions of this rule. This notice shall be sent at the same time as, and may be incorporated within, the notice of the § 341(a) meeting of creditors. The clerk shall schedule a confirmation hearing date, in the event an actual hearing is required under this rule, and provide notice of the date on the notice of the § 341(a) meeting of creditors.

(3) **Objections to Confirmation of the Plan.** Any objection to the confirmation of the plan must be in writing and filed with the clerk, the trustee, debtor, and debtor's attorney prior to or on the date of the scheduled § 341(a) meeting of creditors, or within seven (7) days thereafter. An objection to confirmation must set forth with specificity the grounds for objection and is governed by Fed. R. Bankr. P. 9014.

(4) **Confirmation of Plan Without Objection.** Where no objection to confirmation of a chapter 13 plan is filed within the time limits established by this rule, then a judge, without hearing, may enter an order confirming the plan.

(b) **Chapter 13 Plan and Schedules Not Filed With Petition.**

(1) **Objections to Confirmation of the Plan.** When the chapter 13 plan and all other schedules and statements are not filed with the petition, as identified in LBR 2002.3, any objections to confirmation of the plan must be in writing and filed with the clerk, the trustee, debtor and debtor's attorney no later than seven (7) days prior to the time set for the confirmation hearing. An objection to confirmation must set forth with specificity the grounds for objection and is governed by Fed. R. Bankr. P. 9014.

(2) **Notice of Hearing.** When the chapter 13 plan and all statements are not filed with the petition, as identified in LBR 2002.3, the notice of hearing of confirmation required by LBR 2002.3(a) shall state that any objection to the confirmation of the plan must be in writing and filed with the clerk, the trustee, debtor and debtor's attorney no later than seven (7) days prior to the time set for the confirmation hearing. If the hearing is set by the debtor with a plan filed and noticed after the petition is filed, the date of the confirmation hearing must be in compliance with 11 U.S.C. § 1324(b).

(3) **Confirmation of Plan Without Objection.** Where no objection to confirmation of plan is filed within the time limits established by this rule, then a judge, without hearing, may enter an order confirming the plan.

(c) **Amendment of Plans.** The proposed plan may be amended anytime prior to confirmation to resolve an objection. Such amendment must be included in an amended plan or in the order for confirmation. Where a timely objection has been made, the plan will not be confirmed until the objecting party has withdrawn such objection or a hearing is held, or the parties reach an agreement as stipulated to in the order of confirmation. Where the amendment does not affect any other party in interest, a judge may confirm the plan as amended without notice or a hearing. Where the amendment would affect another party in interest, the plan as amended must be mailed to each affected party with a notice providing twenty-one (21) days to object to the amendment. If no objection is made within the time allowed, a judge may confirm the plan as amended without a hearing.

(d) **Unresolved Objections to Confirmation.** Where an objection to a proposed chapter 13 plan cannot be resolved by an amendment to the proposed plan, or where the trustee does not recommend confirmation, the court shall hold a confirmation hearing to resolve the objection, or the objecting party(s) and trustee have endorsed the confirmation order.

(e) **Standard Chapter 13 Plan and Order.** The debtor shall use the standard approved chapter 13 plan and order for this district with such alterations as may be appropriate in a particular case. If the debtor provides additions, deletions, or other modifications, the debtor shall provide at the beginning of the plan a notice that the chapter 13 plan contains deviations, and the deviations shall be clearly identified. If the debtor is represented by an attorney, the plan or any amended plan shall be signed by the attorney at the time it is filed and shall be signed by the debtor prior to the

confirmation hearing. If the debtor is not represented by an attorney, the plan shall be signed by the debtor at the time it is filed. If either the plan or any amended plan is further amended and the amendments are contained in the order confirming the plan, the proposed order confirming the plan shall be signed by the debtor, the debtor's attorney, the trustee, and any other party in interest affected by the amendments. (Adopted January 5, 2006, effective January 1, 2006; revised January 2, 2007, effective January 1, 2007; amended January 1, 2008, effective January 1, 2008; amended effective December 1, 2009; amended effective January 1, 2013.)

Rule 7067.1. Deposits (Registry Fund).

(a) Whenever a party seeks an order for money to be deposited by the clerk in an interest bearing account, the party shall prepare a form of order in accord with the following.

(b) The following form of standard order shall be used for the deposit of registry funds into interest bearing accounts or the investment of such funds in an interest-bearing instrument:

> IT IS ORDERED that the clerk invest the amount of $_____ in Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 USC § 2045, and said funds to remain invested pending further order of the Court.
>
> IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and directed by this Order to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

(Adopted January 5, 2006, effective January 1, 2006; amended effective January 1, 2013.)

Rule 7067.2. Withdrawal of a Deposit.

(a) **Order of the Court.** Funds may only be withdrawn upon an order of the court. Such order shall specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

(b) **Application Process.** Any person seeking withdrawal of monies, which were provided to the court under LBR 7067.1 and subsequently deposited into an interest-bearing account or instrument as required shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number, and the mailing address of the ultimate recipient of the funds. (Adopted January 5, 2006, effective January 1, 2006; revised January 2, 2007, effective January 1, 2007; amended effective January 1, 2013.)

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Rule 27-13. Sealed Documents; Motions to Seal.

Circuit Advisory Committee Note to Rule 27-13. Absent an order to the contrary, any portion of the district court or agency record that was sealed below shall remain under seal upon transmittal to this Court. The Court does not automatically close oral argument to the public when briefs or the record have been filed under seal. A party seeking a closed hearing must move for such relief. (Rev. 7/1/12)

Cross References. Circuit Advisory Committee Note to Rule 3-5; 30-1.10. Presentence Reports.